EXHIBIT E

In The Matter Of:

Misty Blanchette Porter, MD v.
Dartmouth-Hitchcock Medical Center, et al.

Edward Merrens, MD
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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT
Case No. 5:17-cv-194

MISTY BLANCHETTE PORTER, MD,
Plaintiff
vs.
DARTMOUTH-HITCHCOCK MEDICAL CENTER, DARTMOUTH-HITCHCOCK CLINIC, MARY HITCHCOCK MEMORIAL HOSPITAL, and DARTMOUTH-HITCHCOCK HEALTH,
Defendants

D E P O S I T I O N

of

EDWARD J. MERRENS, MD

Taken at the law offices of Vitt & Associates, PLC, 8 Beaver Meadow Road, Norwich, Vermont on Tuesday, July 30, 2019 commencing at 10:00 a.m. before Sunnie Donath, RPR

APPEARANCES:

GEOFFREY J. VITT, ESQUIRE
SARAH H. NUNAN, ESQUIRE
Vitt & Associates, PLC
8 Beaver Meadow Road, PO Box 1229
Norwich, Vermont 05055
On behalf of the Plaintiff

KATHERINE BURGHARDT KRAMER, ESQUIRE
KBK Law, 6 Mill Street
PO Box 23, Middlebury, Vermont 05753
On behalf of the Plaintiff

DONALD W. SCHROEDER, ESQUIRE
Foley & Lardner, LLP
111 Huntington Avenue, Suite 2500
Boston, Massachusetts 02199-7610
On behalf of the Defendants

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STIPULATIONS

It is hereby stipulated and agreed by and between the attorneys of record for the respective parties hereto as follows:

1. That the testimony of EDWARD J. MERRENS, MD may be taken pursuant to the Federal Rules of Civil Procedure, and treated as if taken pursuant to notice and order to take depositions and that all formalities of notice and order are waived by the parties, and the signatures to the stipulation are in like manner waived;

2. That all objections except as to matters of form are reserved until the deposition or any part thereof is offered in evidence;

3. That the deposition may be signed by the said EDWARD J. MERRENS, MD before any notary public.

* * * * *

EDWARD J. MERRENS, MD,
duly sworn to tell the whole truth, and, nothing but the truth, deposes and says as follows:

EXAMINATION BY ATTORNEY KRAMER

Q. Good morning, Dr. Merrens.
A. Good morning.
A. We met a few minutes ago. My name is Katie Burghardt Kramer. I am one of the lawyers for Misty Porter in this case. I'm here today with Sarah Nunan and Geoffrey Vitt, who are also attorneys for Dr. Porter. Have you been deposed before?
A. I think, a while ago in the past, yes.
Q. Do you remember how many times?
A. I think, twice.
Q. What was the context?
A. I think it was in -- I can't remember now. I think it was in the context of a legal case involving, involving the hospital where I was interviewed by, by counsel.
Q. And have you been part of a lawsuit?
A. No.
Q. No? I'll go over some of the basics of how this works.
A. Sure, yeah.
Q. It sounds like you have some familiarity with the process.
A. Please go through that.
Q. Let's go through it.
A. Yeah, for sure.
Q. We need to get a verbal response to questions --
A. Okay.
Q. -- so that our court reporter can take down answers.
A. Sure.

ATTORNEY SCHROEDER: Make sure she finishes first, and then answer, because, otherwise, our court reporter will have a little hard time taking down your answers.

BY ATTORNEY KRAMER:

Q. That is my next point on the list. We have to make sure not to talk over each other so that the court reporter can take down a clean transcript. Sometimes, in normal conversation, it's natural to jump ahead or to anticipate the end of a question. Here I ask that you wait for me to finish the question, even if you know exactly where I'm going so that we get it in a transcript.
A. Sounds good.
Q. If you don't understand a question, please ask me to rephrase. I'll be happy to do so. Otherwise, I will assume that you have understood the question. If you need to take break at any time, totally fine. I just ask that you answer any pending questions before we take a break.

Your attorney may object periodically to questions. Unless he instructs you not to answer, we still need you to answer the question.

ATTORNEY KRAMER: Don, we, last week at the deposition of Daniel Herrick, we had a, you had a conversation with Attorney Vitt about speaking objections. My understanding is that, for this deposition, objections will be just simply stated without lengthy speaking objections. Is that, is that your understanding as well?

ATTORNEY SCHROEDER: I don't recall having a conversation about it. I'll state the objections on the record that I think are appropriate, but we'll take it as it goes.

BY ATTORNEY KRAMER:

Q. Dr. Merrens, did you take any medication this morning that may affect your memory or cognition?
A. I did not.
Q. What did you do to prepare for this deposition, without revealing any privileged communications you may have had with counsel?

A. I met with counsel. I, I reviewed some emails that I had sent and I made available in the course of this case. That's all.
Q. Did you review any documents other than your emails?
A. No.
Q. I mentioned a moment ago --
A. I reviewed --
Q. Oh, go ahead.
A. Let me clarify that. I'd reviewed emails that might have been sent to me, not necessarily emails that -- they were not just all authored by me.
Q. Any documents other than emails?
A. I reviewed the Complaint filed on behalf of Misty.
Q. As a reminder, I saw you shake your head a moment ago. We need a verbal response. If you, if you shake your head, please also say "no".
A. I will try to do that.
Q. Okay, thank you. And I can remind you as well. Last week Daniel Herrick was deposed. Did you talk to Daniel Herrick at all about his deposition?
A. I've had no, no interaction.
ATTORNEY SCHROEDER: Wait until she finishes.
THE WITNESS: Okay. Yeah. No.

BY ATTORNEY KRAMER:
Q. You've had no interaction with Mr. Herrick --
A. No.
Q. -- since his deposition? Did you receive anything in writing from Mr. Herrick after his deposition?
A. I did not.
Q. Do you have a personal email account?
A. Yes.
Q. And were you asked to search your personal emails in connection with this litigation?
A. No.
Q. What is your personal email account?
A. Like, what is the account name and --
Q. Yes. Would you spell it?
A. Emerrens@gmail.com.
Q. Do you have any other personal email accounts?
A. I do not.
Q. And were you asked to search your Dartmouth-Hitchcock email account in connection with this litigation?
A. I believe I provided access to any documents that I might have either sent or put in a folder that related to this case.
Q. Did you personally, at any point, undertake a search of your email account?

ATTORNEY SCHROEDER: Just for the record, we actually did the search. It was -- we did a custodian search of his email. So we, I think you're aware that we had search terms that we applied to his Dartmouth-Hitchcock email account like we did with the other custodians in the case.
THE WITNESS: Let me try to clarify. I was not asked to undertake a personal search using terms or any relevance to, that, that, based on my own filing system or some mechanism. I provided -- I have an email account at work that is owned by the organization. I provided full access for the organization to search the account and anything I've sent or filed for the purpose of this.
BY ATTORNEY KRAMER:
Q. Thank you. Do you send or receive text messages?
A. I do.
Q. And have you ever exchanged text messages with anybody else at Dartmouth-Hitchcock?
A. Of course, yes.
Q. Who?
A. Members of my senior team, residents that I work with on clinical rotations, the, the senior vice president that works with me, the vice president for our community group practices.

Q. Did you ever exchange text messages with Dr. Leslie DeMars?
A. I did not.
Q. Did you search your text messages in connection with this litigation?
A. I did not.
Q. Were you asked to?
A. I was not.
Q. Do you use any devices to send messages other than a phone, such as an iPad?
A. On my iPad I have the ability to send the same text messages that I do on my phone. It's the same account.
Q. Do use the iPad for that functionality?
A. Sometimes.
Q. And do the messages synch between your iPad and your phone such that, if you use your iPad to send a message, does it then show up on your phone?
A. Yes.
ATTORNEY SCHROEDER: Before we leave this topic, one question you haven't asked him is whether or not he transacted any business on his personal email account. I know you're going to follow up with me on that issue, so, you know, I could wait and ask questions at the end. I'd rather just deal with it as

we go along.
BY ATTORNEY KRAMER:
Q. Sure, we can go back to that. With your personal email account, the one that you referenced at Gmail, did you use that email account to discuss anything related to the REI division?
A. I did not. I don't use it for anything associated with work whatsoever.
Q. Do you keep hard copy files in your office?
A. I do not.
Q. You're paperless?
A. I am.
Q. Good for you. Do you keep handwritten notes of meetings?
A. I sometimes take notes as reminders for to-do items, but I don't generally take notes or minutes in the course of meetings that, that I hold or I participate in.
Q. If you do take notes, do you retain those notes?
A. They're usually on my schedule for the day. Once I've completed a follow-up with someone or any to-do items, I usually recycle that piece of paper. They're not formal minutes or a detailed accounting of what occurred in the meeting. They're mainly what do I have to follow up on and do. They're check boxes.

Q. Do you keep documents stored locally on your computer hard drive?
A. I do not.
Q. So everything that you have is stored to the Cloud system?
A. Can you be more specific about what you're asking me, what, what documents I store?
Q. Well, what I'm getting at is whether any documents that you created would be on a network server such that somebody else coming in and running a search would have access to all of them.
A. Any documents that I have, anything that I have would be on the, on the server at work and in my email. So anything that would be sent would be via email. Documents or otherwise that would be shared would all be through our proprietary email system.
Q. Do you ever prepare documents that you don't send by email?
A. I'm sure there are documents that I prepare that I store that are not sent by email. That, that may be the case.
Q. Do you ever save drafts of documents locally on your computer?
A. There are documents that I save on my computer that are, may not be completed or may have been

completed, but it's -- yes, I think the answer is "yes". I'm sure, in my work -- I don't have an extensive folder of Word files. Most of the communications that I do are actually within the context of email.
I don't communicate -- you asked about texting. The texting that I do with the people at work is in the context of, Are you going to be at this meeting? What time should I catch up with you? Is it still in this conference room? Have a good weekend. It's not conveying the information that I would, that I would send that I would actually want to be part of a document or a reference that I would send an email.
Q. Understood. Do you maintain a calendar either electronically or hard copy?
A. I do.
Q. Is it electronic or hard copy or both?
A. It's electronic.
Q. Do you maintain that calendar, or does somebody maintain it for you?
A. My assistant maintains my calendar. I have access to it so I can add when I have a dentist appointment or other things, but it's maintained by my assistant.
Q. Would your calendar show all of the meetings that you had over, let's say, the period of April, May, June

2017? Would your calendar show all of the meetings?
A. Absolutely.
Q. Do you have meetings that don't show up on your calendar?
A. No.
Q. If somebody dropped by, does that ever happen?
A. Yes.
Q. And would you then record that on your calendar?
A. No.
Q. Let's go briefly through your educational background starting with college. Where did you go to college?
A. I went to Dartmouth College.
Q. And I assume after that you went to medical school.
A. No. I --
Q. No?
A. I did research.
Q. You did?
A. I lived in Borneo, and then I went to medical school.
Q. Oh, how long did you live in Borneo?
A. For a year doing rainforest research, and then I --
Q. And then medical school?

A. And then I went to medical school at Dartmouth, which is now the Geisel School of Medicine.
Q. What was your education after medical school?
A. After medical school I went to residency at the University of Washington Medical Center in Seattle. I trained in internal medicine, and I was a, selected as the chief resident. So I spent an extra year as the chief resident in the University of Washington system, and I was based at Harborview Medical Center, the county hospital.
Q. Did you receive any training post-residency?
A. Following residency, when I, I -- I have a masters in health care delivery science from Dartmouth College and the Tuck School of Business.
Q. And when did you obtain the masters from Tuck?
A. 2013.
Q. When, when did you receive your medical degree?
A. 1994.
Q. What, what prompted you to obtain the, the masters from Tuck?
A. I returned to Dartmouth in 1998 as a general internist and began being involved in a lot of -- I became involved in leadership roles. I started a whole section. I took over some involvement in inpatient care and became involved in health care, in health care

delivery, in leadership, in a lot of issues around how health care systems are organized, and I was selected to be a cohort sponsored by Dartmouth-Hitchcock to go through this masters, masters program, and it was part of a leadership development exercise and advancing my career.
Q. Has that study been helpful for your career since then?
A. Absolutely.
Q. In what ways?
A. I think the program allowed me to work with about 50 other people over a year-and-a-half period of time who had about 20 to 25 years of experience in health care delivery from around the United States. We looked at wide ranges of issues of health care, economics, hospital structure, leadership, delivery of care, insurance, health care finance, which is very much consistent with what my role is within the organization and our system now.
Q. Why was the REI division closed?
A. The REI division was closed for a variety of reasons. There were issues. Finally, because it lacked the staffing to be able to provide the care that was necessary for a program that requires sometimes 24/7 management of cycles and harvest and delivery of

care. There were challenges around recruitment and turnover of nurses in that area, and I think there was a, some fundamental discord amongst the, the group around how the care was provided, but, ultimately, it came down to the simple fact that we didn't have the staffing in order to provide the safe and effective care that we felt the group could.
Q. What was your role in the decision to close the REI division?
A. Ultimately, it was my decision. The chairs all report to me in our system. We review issues at departmental level. We review issues and problems and challenges, and, in discussions with Daniel Herrick, the VP for OB/GYN, and Leslie DeMars in her chair role, it became clear that there were challenges and concerns and, although ultimately the chair would effect the decision, it was really a decision that was brought to me, and I fundamentally made the final decision with our counsel about that we close the REI program.
Q. Why was Dr. Misty Porter terminated?
A. Because we closed the program, the REI program. So her termination was, occurred at the same time we terminated the other physician providers in the program. We ended the program in which she worked.
Q. And what was your role in the decision to

terminate Dr. Porter?
A. The role was that we terminated the program. We ended the program, and, in ending the program, we made the decision also that the people that provided that care that was no longer going to be needed would also be terminated. So we made the decision to terminate the physicians as the program ceased operation. Misty was one of the three physicians that provided care in this program.
Q. Ultimately, it was your decision to terminate Dr. Porter?
A. My decision was to -- ultimately, I mean, ultimately, the program was, we ended the program, and in order -- their termination was part of the closure of the program. Everything, I am ultimately responsible for everything that happens from a clinical aspect at Dartmouth-Hitchcock. I oversee clinical operations for the system. So was it ultimately my decision? Yes.
Q. Looking at the, the decision to close the REI division, I'd like to go over the roles of various players briefly. We'll get into more detail, but for now.
A. Sure.
Q. So, looking at the decision to close the REI

division, what was the role of Daniel Herrick?
A. Daniel is the vice president who is closely aligned, who oversees the department from an administrative standpoint. He's an administrator. He understands financial operations. He understands clinical, you know, how clinical delivery, hiring people, budgets, planning.
Q. What was Maria Padin's role in the decision to close REI?
A. I don't believe Maria had a specific role in the decision. Maria Padin is our Chief Medical Officer, so, and she's also an obstetric and gynecologic surgeon. So she was part of this department for her clinical role. The, her role, she was someone that was informed as part of the process, because she oversees the medical staff, but the decision wasn't necessarily hers. She was involved in, in the discussions and kept apprised.
Q. How about Dr. Leslie DeMars?
A. So Leslie was the chair of the department, and the discussions that -- so, can you reframe your question, what was her role? Please reframe the question as it relates to Dr. DeMars.
Q. Sure. What was Dr. Leslie DeMars's role in the decision to close the REI division?

A. So Leslie was ultimately the person that, that made the decision, that made the announcement to, to the group. This was a decision that we supported after looking at the information. Ultimately, this was my decision, but her role was really to kind of understand all the information, discussions that we had, and to be able to convey this to the department after a lot of careful thought.
Q. Did she make a recommendation to you about what should happen?
A. So we had a discussion. All the discussions around the recommendations to close REI included Daniel Herrick and Leslie, and so the recommendation was formed after a lot of discussion with both of them.
Q. Still going through what the various people's roles were, what was the role of Aimee Giglio in the decision to close the REI division?
A. She was not involved in the decision. Her role as the Chief Human Resource Officer was to, is to understand the, our obligations and process from a human resource, from an employee standpoint, what is it, when you close a division, what are our obligations, and how do we make sure that we're doing everything correctly from an HR standpoint from severance to, to everything from health insurance and

range like that. So she was very key to understanding, How do we go about doing this?
Q. How about Heather Gunnell; what was her role in the decision to close the REI division?
A. Heather provided us information and data around what the division had gone through, what the department had gone through, and reports to, reported or reports to Daniel in terms of daily operations for this group. So her role in the decision was providing data, information about how the, how things were operating, how the process of caring for patients. She would have been the person that really knew the day-to-day challenges of adequate nursing care and provision of care, and she would have understood that in terms of hiring and budgets and nursing and recruitment and would have, that would have been, had a lot more of the granular data that she would then report to Daniel Herrick.
Q. At the time, what was Heather Gunnell's job title, if you recall?
A. I think she was the practice manager.
Q. Other than the individuals I've just gone through, was anybody else closely involved in the decision to close the REI division?
A. No.

Q. Did you speak with either the board or any board members about the REI division before the REI division was closed?
A. Are you talking about the -- can you be more clear about the board?
Q. The Board of Trustees.
A. Okay. The Board of Trustees for the health system or the Board of Trustees for Mary Hitchcock Hospital?
Q. Both.
A. There was no discussion with members of the board.
Q. Do you know who Elizabeth Todd is?
A. I know who she is.
Q. Who is she?
A. I believe she was a nurse that worked in reproductive endocrinology. Maybe, I can't remember if she's a nurse or a nurse practitioner. I think she's, I think she's -- I'm not sure. I know she works, she's either a nurse or a nurse practitioner.
Q. And she was in the REI division as of the time of the closure, right?
A. Correct.
Q. Are you aware of whether she was terminated or not along with the closure of REI?
A. I believe Elizabeth stayed within the organization but switched over entirely to do OB/GYN, and I, I don't

know whether it was in the clinic or she did inpatient care, but I know that she was doing -- I think she stayed on to do obstetrics and gynecology.
Q. Do you know why she was not terminated?
A. Do I know why she was not terminated? Her, I, when the program -- why she was not terminated?
ATTORNEY SCHROEDER: Just understand that, when you're repeating the question out loud, it's being recorded by the court reporter.
THE WITNESS: My understanding, and I may not have the complete understanding of her role, was that she had a range of other things that she did. I know that she worked in REI. When the program ended, there were other opportunities for her to work full time within OB/GYN, and that was, that was the, the path that, that occurred.
BY ATTORNEY KRAMER:
Q. Was there an intention to rebuild the REI division with Elizabeth Todd as part of the rebuilt division?
A. There was no, no immediate plans to rebuild the REI division when it was, when it was closed.
Q. What, if anything, did Dr. DeMars tell you about the reason for retaining Beth Todd?
A. I don't believe I, I know. I don't know. I don't remember Dr. DeMars explaining why Beth Todd was

retained, but I specifically don't remember a plan to retain Beth Todd to restart the REI program.
Q. I think you may have answered this a minute ago, but let's go through it again to make sure it's clearer. When the REI division was closed, was there any plan to reopen it, or was the plan to keep it closed permanently?
A. I don't think the -- so there were no formal plans. So we didn't announce it to say we're closing it but reopening, and here's a specific time. We thought we needed, for the reasons of staffing and function and patient care, to close the program. I think we have the full intent of providing REI and IVF services in the future, and we would restart a program in the future, but we had made no specific dates or promises or plans.
Q. At the time of the closure, was there an expectation about the time period, even if it wasn't a formal plan?
A. There wasn't an expectation about the time period. I think all of us felt that this was an important part of the care that we delivered and we weren't meeting our own standards about how that, how that could happen due to, primarily due to staffing and that, clearly, we wanted to be able to do this in the future, but there

was no timeframe around when that would occur.
Q. Since June of 2017, have the plans or discussions around REI division reopening changed?
A. We've had some discussions around the needs and how we might go about thinking about it. We've not made any substantive decisions, and this was primarily because we were going to leave this to the, the purview of the new incoming chair, Ilana Cass.
Q. When did Dr. Cass come on board?
A. July 15th of this year, I believe, or July, mid July.
Q. Meaning about a couple of weeks ago?
A. Two weeks ago.
Q. Was there an interim chair before that?
A. There was.
Q. And how long -- was that Dr. Erekson?
A. Correct.
Q. How long was Dr. Erekson the interim chair?
A. From, I believe, the end of June or early July 2017 until mid July of this year.
Q. That seems like a long time to have an interim chair. Is that an unusual period of time to have an interim chair?
A. It is not. We undertook a national search. We, we had a robust process around selecting the interim

chair. Then we had to go through a period of time to do a national search, and it takes time to select the right candidate, and we feel very happy with the candidate that we selected.
Q. I don't know much about Ilana Cass. Was she an internal candidate?
A. No.
Q. Where did she come from?
A. Cedars-Sinai in Los Angeles.
Q. What's her subspecialty?
A. I think her specialty is gynecologic oncology.
Q. Let's switch gears a little bit to go through your employment history over the last ten years. We touched on this a little bit, but, going back to ten years ago, what was your job at that time? And then we'll go, just to give you a preview, we'll go through to the present time what your job titles were and then go through the job duties for each of those positions.
A. Okay.
Q. So, starting ten years ago, what was your, what was your job title?
A. I think in 2009 I was the section chief for hospital medicine.
Q. How long -- when did you start that position?
A. Started the program in 2003. I became the section

chief in 2005.
Q. How long did you remain section chief?
A. I stepped down from the section chief role, I believe, in 2012 when I was named the Chief Medical Officer.
Q. How long were you Chief Medical Officer?
A. I'm trying to get the dates, because I think I was the Chief Medical Officer until 2015 when I took on a System Chief Medical Officer role, and I think the title was Executive Director for System Integration, and we hired a new Chief Medical Officer.
Q. How long were you in that role, the system something-or-other?
A. Until 2016.
Q. What position did you have starting in 2016?
A. Chief Clinical Officer for the Dartmouth-Hitchcock system.
Q. Can you tell me again what the title was in between you serving as Chief Medical Officer and Chief Clinical Officer?
A. It was a System Chief Medical Officer role.
Q. System --
A. CMO.
Q. How is that different from regular CMO?
A. Chief Medical Officer in our organization is for

the hospital itself. So you work with the Chief Nursing Officer, and you work with the Chief Operating Officer for Mary Hitchcock Memorial Hospital. I transitioned to a role that had some involvement across the broader system working with, working with member hospitals and other, other Chief Medical Officers. In 2016 I transitioned to a, a broader role over that, the Chief Clinical Officer role.
Q. Is there still a system CMO?
A. We do not have a system CMO.
Q. And you do currently have a CMO?
A. Correct.
Q. Why was the position of system CMO eliminated?
A. I elected to continue to absorb the functions that I did in that role into my Chief Clinical Officer role. The Chief Clinical Officer role that I took also had some academic responsibilities that were taken over by someone else. So it was just, in the job transition, I elected to continue the system integration work that I had done in the system role.
Q. And you're still the Chief Clinical Officer --
A. Correct.
Q. -- now? Have you had any interim positions along the way?
A. No.

Q. Were you co-interim CEO?
A. Oh, yes. My apologies. In the year before Dr. Conroy was, arrived at Dartmouth-Hitchcock and Dr. Weinstein had left, Steve LeBlanc, our Chief Strategy Officer, and I shared the title of co-interim CEO.
Q. For what period of time?
A. I believe it was for a year.
Q. Let's talk about the job duties for those roles starting with CMO. What were your job duties?
A. Job involves oversight of the medical staff office, oversight of credentialing and privileging. There are job descriptions detailed in the bylaws as it relates to professionalism and the role of the, the CMO mediating a number of those, being the mediator as it relates to professionalism and other aspects of discourse. There are lots of other aspects of the job, working with the Chief Nursing Officer, going to quality rounds. There's a whole range of things that happen in that role.
Q. Sure. And is -- Dr. Padin is now the CMO, right?
A. Correct.
Q. Is her job now different from the responsibilities you had as CMO?
A. No.

Q. Then you became the system CMO. You described the job duties to some extent previously. Is there anything you would like to add in explaining the job duties when you were system CMO?
A. No.
Q. Chief Clinical Officer, what are your job duties?
A. I oversee clinical operations for the Dartmouth-Hitchcock system. The chairs of all the departments report directly to me. The Chief Medical Officer, the Chief Health Information Officer, the Chief Quality Officer report to me.
Q. Anything else that you would add to your job description?
A. I work in close collaboration with an executive C-suite team that includes the CFO, the Chief Strategy Officer, Chief of Health, and the, the Chief of Human Resources, and the, and I report directly to the CEO.
Q. Do you maintain any clinical responsibilities?
A. I do.
Q. How much?
A. I work on average about a week a month as a hospitalist at Mary Hitchcock Memorial Hospital.
Q. And you mentioned that you were the, the co-interim CEO with Steve LeBlanc. What were your job duties as co-interim CEO?

A. Our job was to maintain the organization in, while we were between chief executives, so coordinating with the other chief officers, meeting with the president of the Board of Trustees, and ensuring that our organization spanned that interim period without any interruption. We had -- it was a time of improving and restructuring our financial situation, and we successfully did that over the course of the year, allowing Dr. Conroy to arrive in 2017.
Q. What was the period of time over which you improved the financial --
A. A year.
Q. A year of what, what dates?
A. 2016 to 2017. Probably the summer, June 2016 through the summer of '17.
Q. Was the closure of the REI division in any way related to those overall financial difficulties?
A. Not at all.
Q. How did you and Steve LeBlanc divide up your duties as co-interim CEO?
A. I don't believe we had any specific guidelines for the division of work. We met daily and throughout the day around issues that came before us, and we decided how best to handle them in a, in a partnership model.
Q. At the time that you were co-interim CEO, were you

also Chief Clinical Officer?
A. Yes.
Q. Did you have any other roles, any other titles?
A. No.
Q. Who, what's the chain of command that goes up to the Chief Clinical Officer?
A. So all the department chairs, the chief health, the Chief Health Information Officer, the Chief Quality Officer, the Chief Medical Officer, the medical director of our community group practice, I think those are the, those are the primary chiefs and department heads. Also, the Center Director for the Heart and Vascular Institute, who's not a chair, but a Center Director, reports directly to the Chief Medical Officer.
Q. Do you think, across the organization, that there's collaboration between the different parts of the organization, or is it, is it somewhat siloed in different divisions?
A. I think it's highly collaborative.
Q. We spoke a little bit earlier about Daniel Herrick. What's his, what's his job?
A. He's the vice president for obstetrics, orthopedics, surgery, and perioperative services at Mary Hitchcock.

Q. Are there a number of VPs that divide up different groups?
A. Correct.
Q. Does he have any medical background?
A. He's not a medical practitioner. He's held other leadership roles in other health systems.
Q. Is it unusual to have a VP in that position who doesn't have medical training himself?
A. No.
Q. Can you explain more?
A. In, he has an administrative role. It is entirely common to have people that are in administrative roles in a hospital or a system that may not be medical practitioners but have worked in administrative roles in hospitals, and he certainly came with that experience.
Q. Were you involved in the CEO search for Dr. Conroy or for somebody to replace Jim Weinstein?
A. I was not on the search committee.
Q. Were you otherwise involved?
A. I interviewed candidates.
Q. Were you on a committee that that interviewed candidates?
A. There was a search committee of which I was not one of the principals, but, in the process of

candidates that were selected, I was one of a core group of people that interviewed prospective candidates.
Q. Who else was in that core group?
A. Probably some of the other chief officers.
Q. Did you apply for the position of CEO?
A. I did not.
Q. What was the time period in which you were interviewing candidates for CEO?
A. Are you asking how many months did this happen or what was the time? I'm not sure. You just want to know -- there was a period of time over a year that the search occurred, and there was a process in which we brought through maybe three or four candidates that I interviewed. Those, and, and the, the people on the search committee and those that interviewed were, that information was given to the search committee who ultimately made a decision.
Q. When did you do the interviews of candidates?
A. Can you be more specific?
Q. You said that you, that you handled some interviews of candidates for CEO and there were maybe three or four candidates that you interviewed. When did those interviews occur?
A. Like --

Q. Month? Year? Was it spring of --
A. I don't --
Q. -- 2017? Was it --
A. I don't remember when.
Q. You don't? Okay.
A. I don't remember when the interviews for the potential candidates occurred. It might have been over the winter. I can't remember. I'd have to go to my calendar to see when those were scheduled.
Q. How many times did you interview Dr. Conroy?
A. I believe, twice.
Q. Do you remember when those interviews were, especially in relation to this closure of the REI division, if it was before or after?
A. They were before.
Q. How much before?
A. Several months before. There, there, there's no connection between the interviewing -- when I, we interviewed Dr. Conroy, she came on the role, came in the role the summer of 2017, and we can certainly get into the timeline, but that, this evolved in the spring of '17, but there was not, there was no connection between the two.
Q. When did, when was the decision made to hire Dr. Conroy as the new CEO?

A. I, I don't know the exact date. There would have been a public announcement. There would have been a range of things. I just, I can't tell you the exact date.
Q. Is Dartmouth-Hitchcock an academic medical center?
A. Yes.
Q. What does that mean?
A. It means that we participate in a broad range of educational activities. We have alignment with the Geisel School of Medicine, Dartmouth College, the Thayer School of Engineering, the Tuck School of Business, a whole range of educational opportunities. We have a broad and diverse residency, graduate medical education residency for postgraduate, graduate medical education as well as fellowships. We participate in a broad range of training programs for nurses, advanced practitioners, technicians, and other roles.
So I think we are involved in research. We have research institutes. We have a, a national cancer center. We're one of 30 organizations in the United States that have an NCI-designated cancer center. So we have a broad spectrum of academic and educational pursuits that are the characteristics of an academic medical center.
Q. And, and, just briefly, how, how is an academic

medical center different from a regular nonteaching hospital?
A. It lacks the attributes I described that are characteristic of an academic medical center. They tend -- a regular medical center may, may not have trainees, may not have active research, may not have a broad array of learners that are engaged or and involved in the care delivery.
Q. And how does being an academic medical center affect the core values of Dartmouth-Hitchcock?
A. Our mission is around discovery of new knowledge about training, training and education. Those are part of our core values as we, in the provision of care.
Q. And is educational training of medical students and residents part of the core mission of Dartmouth-Hitchcock?
A. Yes.
Q. How long have you known Dr. Porter?
A. I, I mean, I've known who she is for a, a long period of time. I became much more engaged with Dr. Porter probably in 2012 when I took over the Chief Medical Officer role and I got to know her quite well.
Q. In what way did you get to know her quite well?
A. At that time with the previous chair, Rich Reindollar, Dr. Porter was experiencing some degree of

conflict and with her role and issues that were happening in, in the, in the division and approached me to help mediate the situation between her and her chair, and she and I had extensive meetings over months or a longer period of time.
This was also balanced by the fact that she was also entertaining moving to Hawaii where she had been offered a job in Hawaii, which I, where I think she had, where she had done some training. She had been offered a role there and was really trying to balance what it would mean to move her family out of Norwich, where she had lived for years, to Hawaii where she had trained and done that.
And I became very close with Misty around these challenging decisions, managing conflict. I actually got her engaged with an outside mediator to work with both -- I said -- I meant Reindollar. I may have mis-said -- I said Rothstein. I meant Rich Reindollar if I --
Q. I think you said Reindollar.
A. Okay. Sorry. There was a couple parts in there. I apologize.
Q. Yes.
A. So I actually got an outside consultant to help mediate between the two of them. And so for that was

-- although I knew whom, who Dr. Porter was, this was a period of time where I really became pretty close with Misty around kind of understanding the situation that was happening there, her perspective, and how we might go forward with balancing different needs and understandings and do that, and that was the beginning of kind of getting to know her and knowing a lot about what she did and what she was involved in, and so that was the beginning.

Q. And that, you said, was around 2012, 2013. Did you stay in close contact with her over the years after that?

A. I don't -- we did not stay in close contact. That was really around some difficult decisions she had to make. She was offered an opportunity in Hawaii, and we talked a lot about that. She decided to stay. And my door was always open, and she knew that, but we didn't continue discussions around that pathway, and I think even the, the consultant-mediator relationship did not continue.

Q. Thinking about the period of, let's say, 2014 to 2017, how much interaction did you have with Dr. Porter?

A. Almost none. I, I would see Misty in the hallway or in passing, but there was no, there was really no

ongoing meetings or anything. Just, if anything -- there was no interaction on the same level that, that we had had earlier and that I engaged in.

Q. Did you hear information about what was happening with her practice over that period of time?

A. I did not.

Q. Do you have a view of Dr. Porter's clinical skills?

A. Yes. I think I was -- just, let me just make a comment.

Q. Sure.

A. I'm following up on your previous question. There was a time at which -- I just wanted to -- unrelated to issues that were happening within REI, that UVM changed from an academic focus to a private practice, and their REI physicians moved to a private practice model, leaving their fellow kind of stranded, and I worked with Misty to allow the fellow to come down to Dartmouth-Hitchcock to work down here. So I was involved with her about making that happen. After that -- and I was very supportive of that, and we made that happen. That was another unrelated thing that Misty and I worked on. Your question was -- please repeat your question.

Q. Sure. And with the, the fellowship issue, that

was, I believe that was 2014, 2015, 2016, in that time period?

A. I'd have to go back and check. It was more -- it was providing kind of a landing, landing zone for, for this fellow to come down, but it was an area where I was very supportive of her work.

You had asked about my understanding of her as a clinician and her, and I think she's a talented clinician who is highly respected.

Q. What do you know about the scope of Dr. Porter's clinical practice?

A. I think I know a fair amount. I know that Dr. Porter is a gynecologic surgeon. She's involved in, involved in reproductive endocrinology, in vitro fertilization, pelvic ultrasonography and imaging, has a, had had a dual appointment both in the Department of Radiology and Obstetrics and Gynecology.

Q. And did she have that dual appointment at the time of termination?

A. Yes.

Q. Can you describe for me the procedures that Dr. Porter was able to perform?

A. I'm not sure I can describe all of them. I think there's a wide spectrum of procedures that are done in obstetrics and gynecology. Dr. Porter, I think, had

some specialized expertise in septum, septal surgery in the, in the uterus. She, but I actually don't know a lot of specifics around her practice, around specific surgery. I know she did some surgeries with complex endometriosis, but I don't, I don't know much more.

Q. What I heard you describe was a number of practices that were not REI-specific. What's your assessment of how much of Dr. Porter's practice was REI-specific?

A. I think most of her work was involved in IVF and REI. She had some other areas in which she provided special surgery and did imaging. I think much of the imaging work she did was around, around REI, but certainly had other skills.

Q. Do you know if Dr. Porter was certified to perform robotic surgery?

A. I believe she was.

Q. And -- she was. And do you know if there were other physicians in OB/GYN who were also certified to perform robotic surgery?

A. Dr. Padin also does robotic surgery.

Q. Anybody else?

A. I don't know.

Q. How much of Dr. Padin's time is spent on clinical work?

A. I don't know the exact percent, but she maintains an inpatient -- she maintains an OB/GYN practice, works with residents, and has an operative schedule, so --
Q. When you were CMO, how much of your time was devoted to clinical work?
A. I would say approximately 15 to 20 percent.
Q. Would you expect that it's similar for Dr. Padin?
A. I would.
Q. Are you aware that in late 2015 Dr. Porter became ill?
A. I'm, I don't know the specifics around her illness.
Q. Tell me what you, what you know about it.
A. I know that she required a, a leave of absence due to an illness, but I don't know the nature of the illness.
Q. Do you not recall, or did you never know?
ATTORNEY SCHROEDER: Objection, asked and answered. He says he didn't know.
THE WITNESS: I didn't know at the time.
BY ATTORNEY KRAMER:
Q. Since that time, have you learned anything about her illness?
A. I've read the Complaint.
Q. What do you know about Dr. Porter's medical

treatment at Dartmouth-Hitchcock for her illness?
A. I, I've read the Complaint in which there's been a description, but I know nothing and did not know anything about her illness, the nature of the illness, the conduct or course of her care during that time.
Q. At that time, what did you know about her leave of absence?
A. I knew that she was on a leave of absence.
Q. What did you know about her return to work?
A. I didn't know anything about her return to work.
Q. Would you expect to know about a physician's leave of absence or return to work?
ATTORNEY SCHROEDER: Objection, calls for speculation. You can answer. Go ahead.
THE WITNESS: I'm just trying to formulate the answer. The, I know she was on a leave of absence and, at some point, she came back in some capacity and was working in a reduced capacity. I knew, didn't know the details around why she was out of work or the specific arrangement around her return, and, no, it would not be uncommon for me to know. I oversee 1,500 physicians in the organization through chairs and section chiefs, and I don't necessarily know all the details around return to work or leaves, and that is the sole responsibility of the chair or the section

chief or division director.
BY ATTORNEY KRAMER:
Q. Did you discuss Dr. Porter's leave of absence or return to work with Aimee Giglio?
A. Can you be more specific? Is this in which timeframe?
Q. At any time. Let's start with --
A. Yeah.
Q. -- pre-closure of REI, so before the beginning of June 2017.
A. Before the closure of the program, I might have had discussions with Aimee around just understanding. I didn't know what her status was, so I didn't understand if she was away, if she was on disability, or if she was working. So it may have been just clarifying and understanding what her status was prior to closure. I wasn't aware of how much she was working or whatever. Just wanting to know more about what was the care delivery model like. I don't remember any specific meetings around interactions with Aimee around this.
ATTORNEY KRAMER: Is it okay if we take a short break?
ATTORNEY SCHROEDER: Absolutely.
(A recess was taken from 11:02 a.m. to 11:15 a.m.)

BY ATTORNEY KRAMER:
Q. What did you know, if anything, about the accommodations that Dr. Porter was receiving for her illness or disability?
A. I did not know anything about the accommodations. You're talking about at the time, what timeframe?
Q. Specifically, the spring of 2017.
A. I didn't know anything about the accommodations.
Q. Did you know that Dr. Porter was working a reduced schedule --
A. Yes.
Q. -- at that time?
A. Yes.
Q. What did you know about her reduced schedule?
A. I knew that her FTE was reduced. I knew that she was not as involved in longer operative cases, I think, is my recollection.
Q. Did you know why?
A. I did not.
Q. Did you know that she was receiving long-term disability benefits as of the spring of 2017?
A. I think I did, yes.
Q. When did you learn of that?
A. Probably in the spring of '17 as we began discussions around who are the people involved in this

program, and I, either in conversations with human resources or with Leslie, I understood that she was on long-term disability. Prior to that, I don't think I was aware. I believe I understood that she was working at a reduced rate and had been out, but I didn't know the specifics.
Q. In the discussions, let's say, in the spring of 2017 about what to do with the REI division, did you discuss Dr. Porter's illness?
A. No.
Q. It didn't come up?
A. You're saying in the discussions of the REI program? I didn't know the nature of her illness.
Q. Well, not the nature of her illness but the fact that she was not on a full-time schedule because of an illness.
A. I was aware that she wasn't working full time.
Q. And did you know why she wasn't working full time?
A. I did not.
Q. Did you ask?
A. I don't think I did.
Q. Nobody told you?
A. I was aware that she required a leave of absence and disability. I didn't require -- I didn't, I didn't know the details, nor was that a requirement. It was

not my information to know why she was on disability. It's HIPAA protected, and I didn't inquire.
Q. Was there any discussion about expectation for whether Dr. Porter would be able to return to full-time work at some point?
A. An expectation that she would return to full-time work? There was no discussion about what the time course of her disability or return to work would entail.
Q. Was there any discussion about whether she would return to full-time work, would or could?
A. No.
Q. Did you raise any questions about whether Dartmouth-Hitchcock could or should terminate somebody who was receiving long-term disability benefits?
A. In the course of the discussions about the closure of the program, I likely asked our Chief Human Resource Officer whether, what would be the nature of closing a program, terminating the physicians, and would, would this in any way affect Misty being on disability? I, I think I would have inquired about that as we began to understand the implications of closing the program, and I was informed that it wouldn't affect her disability, that that would continue.
Q. That it wouldn't affect her benefits?

A. Correct, the disability benefits, not her disability, medical disability. It, she, her benefits would continue is, is what I meant to say.
Q. Did you have any concern about possible exposure or liability of the institution if the institution were to terminate somebody who was receiving long-term disability benefits?
A. No. I, my concern was based more around Misty. I wanted to understand what I understood. I didn't know that she was on disability. I knew that she had been out and on disability. I wanted to understand, in the course of the decisions that we were going to make, were we, were we going to treat people well in the context of things, give them adequate severance, give them help in finding their next job, avail them of outplacement services, and, in Dr. Porter's case, I wanted to make sure and understand that the provision of her disability coverage would be maintained.
Q. I asked a moment ago about whether you considered possible risk or liability of the institution as a result of terminating somebody who is receiving long-term disability benefits. Did anybody else raise similar concerns to you about that?
A. No.
Q. We talked before the break about some of your

conversations with Aimee Giglio, and you mentioned some. Can you tell me about any other meetings that you had with Aimee Giglio regarding the REI division?
A. Not specifically.
Q. What do you mean?
A. You're -- you've asked me can I speak about any other conversations I've had. I had -- my conversations with Aimee were around, whatever we have to do in terms of closure of a program, I want to make sure that we do everything correctly in terms of the people involved in this program, and that would be the, that would be the nature of the conversations I had with, with Aimee.
They may have been scheduled meetings. They may have been -- she's two doors down from me, so I often go to her office and just say, "I just want to make sure we're doing this right". So HR was involved. As we made the decision, HR was involved in everything we had to do around this from communications to planning to understanding the nuances of what this would entail. Those were the nature of the discussions I had with Aimee.
Q. Has Dartmouth-Hitchcock ever shut down a division before?
A. We have -- I'm trying to remember now. We have

stopped providing care in certain areas. Whether it's a division or a service, there have been times when we've had to do that.
Q. That sounds different to me than shutting down a division. I just want to make sure that I'm getting a full answer to the question. Has Dartmouth-Hitchcock shut down a division before?
A. Not to my knowledge.
Q. Did Aimee Giglio express any concerns about the unusual nature of shutting down a division or --
A. No.
Q. Maybe I'm being overly specific. Did she express concerns about the fact that there was a plan to shut down a division?
A. No.
Q. Do you know if she expressed those concerns to anybody else other than you?
A. I wouldn't know that.
Q. Aside from these three REI physicians -- ball park is fine -- how many physicians has Dartmouth-Hitchcock terminated in the last five years?
A. I don't know.
Q. Can you give a ball park?
A. No.
Q. Is it more than ten?

A. In the past ten years, you're saying?
Q. I said five years, but we can --
A. Five years?
Q. We can say ten years.
A. I would say it's less than ten.
Q. In the last five years?
A. Yeah.
Q. How about in the last ten years? Less than ten?
A. I don't know.
Q. Would you say that it's unusual to terminate a physician?
A. Yes.
Q. Let's talk about Albert Hsu. Who is Albert Hsu?
A. Albert Hsu is one of the physicians in the, in the division.
Q. What is his specialty?
A. I think he was a reproductive and endocrinology infertility doctor within OB/GYN.
Q. Can you describe to me briefly what your interaction was with Dr. Hsu and what the basis is for your knowledge of Dr. Hsu?
A. I had no interaction with Dr. Hsu. I was aware of his work. I was aware of his membership in the division, and a -- that's my sole knowledge of Dr. Hsu.
Q. Did you ever meet him in person?

A. No. I met him when we closed the program.
Q. What -- he was hired in 2014, and you were CMO in 2014 --
A. Correct.
Q. -- correct? Did you have any role in hiring Dr. Hsu?
A. I would have been on the -- we have a medical -- we have a credentials and privileging committee. All new physicians would come before that committee, be presented based on, and we would do background checks. We'd look at national provider databases, a whole process through the medical staff office for bringing on a new physician, and he would have been approved by that committee and then sent on to the Board of Governors and the Board of Trustees for approval before hiring. That would have been the context of which his name would have come before that committee.
Q. And you were on that committee?
A. Correct.
Q. Do you recall anything about his hiring?
A. No.
Q. Were you aware of any concerns about Dr. Hsu before he was hired?
A. No.
Q. Do you know if the hiring process for Dr. Hsu was

in the normal course or if there was anything unusual about it?
A. No.
Q. Are you aware that Dr. Hsu struggled with completing his charts in a timely manner?
A. At times, yes.
Q. Tell me more of what you mean.
A. We have a -- I instituted a, a new documentation policy about six or seven years ago that required physicians to complete charts in a timely manner. Can't have any more than ten outstanding notes open on a weekly basis, which is, has been challenging for some physicians, and every week I'm apprised of the physicians that have outstanding notes, and he may have been one of those physicians that had struggled with note completion, and but there are lots of physicians like that.
Q. Why did you implement the new policy?
A. We thought that completion of notes was an important part of patient safety and that a referring physician and a patient should have the documentation of their clinical visit completed in a timely fashion. We have an open record at Dartmouth-Hitchcock. Patients can read their medical records, and referring physicians have access to them. So the policy was

around the safe provision of patient care and timely records.
Q. If a physician fails to complete notes in a timely fashion, is that a patient care issue?
A. Absolutely.
Q. You said that these lists of delinquent physicians or physicians who were delinquent in completing their charts were circulated how often?
A. Weekly.
Q. Weekly? How often was Dr. Hsu on this list?
A. I can't tell you. I don't recall. I don't always monitor the list of, that goes out. It's managed at the division level and the department level in terms of documentation, and sometimes it's, it's as simple as, I was away for vacation and I didn't -- these notes came in later. Sometimes it's your supervising trainees who complete their documentation later. Sometimes there are plausible reasons why deficiencies are there. Sometimes you're covering for a colleague and having to manage their in-basket.
There are sometimes reasons why delinquent -- delinquency is a punitive term. What we're trying to get -- there are organizations where physicians are flagged when they're, when they get above a thousand outstanding notes. In our organization we've decided

that the right thing is to have a smaller number, and we manage that. I don't remember him as being someone that was always on the list or always having to be, to be managed.
Q. What's the consequence for having too many delinquent notes?
A. So our policy states that, that you can be suspended if you fail to complete the documentation in a timely fashion. That doesn't happen. Physicians that, under New Hampshire medical --
Q. Just to jump in for a second, when you say, "That doesn't happen", meaning you don't actually suspend people, or nobody is actually so delinquent that they would trigger that, that effect?
A. I should be more clear. Most people are able to complete their documentation in a timely fashion so as not to be suspended.
Q. I'm sorry. I interrupted you. Go ahead.
A. New Hampshire statute states that physicians that are suspended more than three times in a calendar year need to be reported to the state medical board. So there's some statute around this. Again, the goal is not to be punitive. The goal was to get to a place at which we thought the standard was the safe provision of care is timely completion of documents, and there are

always challenges around that, and it's, it's proven to be something that we've done for a number of years now and feel very proud that we, notes get done.
Q. Did you monitor the list to see if the same names came up again and again?
A. I did not. If there were specific situations in which someone was having a problem, the chair or the division director could get in touch with me and say, Hey, their child is sick. They're managing. There are lots of reasons. And we would, we would make appropriate exceptions. That's actually the way it should work. It isn't just this happened, and we're going to do this. So there was discussion, and sometimes there were people that had extenuating circumstances that made sense.
Q. What do you know about Dr. DeMars's efforts to support Dr. Hsu in completing his charts in a timely manner?
A. I don't know anything specific.
Q. Do you know if he received any sort of extra supports?
A. I don't.
Q. Do you know -- what do you know about Dr. DeMars's efforts to support Dr. Hsu in general?
A. I know that she worked to help him develop his

practice. I know that she was working to help him to become board-certified. I know that she wanted to ensure that his clinical skills and expertise continued to develop, but that would be the extent of what I knew.
Q. Do you know if Dr. Hsu struggled?
A. My understanding is that his efficiency in the OR and his -- I think his efficiency and how comfortable he felt were areas that Leslie felt could continue with mentoring and help, and I would say that happens with junior faculty that are hired into other surgical divisions. That was the extent of my knowledge around what Dr. DeMars was doing with Dr. Hsu.
Q. What did you know about Dr. Porter's efforts to support Dr. Hsu?
A. I don't know anything.
Q. Any information that you have about Dr. Hsu would have come through Dr. DeMars; is that fair to say?
A. Yes.
Q. Were you aware of any concerns about Dr. Hsu from any providers in OB/GYN?
A. No.
Q. If there -- at what point would you expect concerns about a provider to reach you at the Chief Clinical Officer level?

A. When the chair thought it was appropriate.
Q. Were you aware of any concerns about Dr. Hsu from patients?
A. No.
Q. Is that information that would have come to you in any sort of channel other than through the chair of the department?
A. It's not uncommon for patients to reach out to me directly, so that could have happened.
Q. And you don't recall that happening in this situation?
A. It did not happen.
Q. It did not happen? Are you aware of, that Dr. Hsu received an evaluation of "performance requires improvement" three times in 2015, 2016, and 2017?
A. I'm not aware.
Q. Are you surprised to learn that a physician received an evaluation like that three times in three years and that that information did not reach you?
A. I think the information that reached me is that there were continued efforts that improving aspects of his clinical care and that it is, that's all I knew of around -- there are clearly areas where people need practice requires improvement, and I, I think the, the, that aspect of his work was something that the, the

chair would have conveyed to me.
Q. At what point does more need to be done if a physician continues to receive "performance requires improvement" evaluations?
A. I think, if we feel like it's impacting patient care or there are other aspects of it that we think could be of more concern, and I would defer to the chair to say, to elaborate more on the specific aspects that require improvement.
Q. Since the closure of REI, have you learned of anything about Dr. Hsu that makes you concerned about the amount of information that you were given by Dr. DeMars?
A. No.
Q. Are you aware of Dr. Porter preparing a lengthy written evaluation of Dr. Hsu in June of 2016?
A. No.
Q. Would those evaluations typically reach you?
A. No.
(Deposition Exhibit 1 marked.)
(A discussion was held off the record.)
BY ATTORNEY KRAMER:
Q. This is lengthy. Why don't you take a minute to read through this while we're getting situated?
(Brief pause.)

Dr. Merrens, have you seen this document before?
A. I have not -- I haven't finished reading it.
Q. Well, I'll give you a minute to finish reading it. Have you seen it before? Is this new to you?
A. I don't believe I've seen this before.
Q. So why don't you take a minute to read through and --
(Brief pause.)
This is a document dated June 3rd 2016. It's eleven pages long, PORTER0000175 through PORTER0000185. Have you had a chance to review this document?
A. I have.
Q. And is it still your testimony that you haven't seen this document before?
A. That's correct.
Q. In this document Dr. Porter provides a review of Dr. Hsu. In this document she raises a number of serious concerns about Dr. Hsu. Do you agree that Dr. Porter raises a number of serious concerns about Dr. Hsu?
A. Yes.
ATTORNEY SCHROEDER: Objection.
BY ATTORNEY KRAMER:
Q. Are you surprised that these concerns were not brought to your attention?

A. I would -- what was brought to my attention was that, as I stated before, that there were concerns about his practice, efficiency, documentation, and other aspects, and I expected those to be managed at the departmental level. There are a lot more -- there are clearly more specifics in this document, and I would expect, if a plan of addressing these was not successful or not, not done, that, that I would have heard more.
Q. Would you hope that, if a, a longstanding and well-respected physician at Dartmouth-Hitchcock had concerns like this about another provider, that it would come to your attention?
ATTORNEY SCHROEDER: Objection, calls for speculation. You can try to answer it.
ATTORNEY KRAMER: Don, let's try not to coach.
ATTORNEY SCHROEDER: I said, "Objection, calls for speculation. You can try to answer it".
ATTORNEY KRAMER: Right.
ATTORNEY SCHROEDER: There's no coaching.
ATTORNEY KRAMER: There is.
ATTORNEY SCHROEDER: There's no coaching involved.
THE WITNESS: So the -- can you repeat the

question?
(Question read by the reporter:
"Q. Would you hope that, if a, a longstanding and well-respected physician at Dartmouth-Hitchcock had concerns like this about another provider, that it would come to your attention?")
THE WITNESS: It, not necessarily. It is at the chair's discretion to manage these issues and these concerns. This was addressed to the division chief. I would expect that this would be managed at the division and department level and, if there was ongoing concern, I would most certainly be involved.
BY ATTORNEY KRAMER:
Q. Do you know if there was ongoing concern about Dr. Hsu, seeing that this letter was dated June 3rd 2016 and there were negative evaluations of Dr. Hsu in 2017?
ATTORNEY SCHROEDER: Objection, assumes facts not in evidence.
THE WITNESS: I don't have his evaluations for reference. I have Dr. Porter's detailed assessment.
(Deposition Exhibit 2 marked.)

BY ATTORNEY KRAMER:
Q. For the record, I have handed you a document with Bates Number 25460 through 25462. It's dated January 3rd 2017, and, in particular, Dr. Merrens, I would like to turn your attention to the second page, which includes reviews. There are three reviews. The top one is from Dr. DeMars dated January 2nd 2017. Then there's one from Dr. Porter, April 13th 2016, and a third from Dr. Porter, August 14th 2015.
Would you agree that the top review dated January 2nd 2017 from Dr. DeMars indicates that Dr. Hsu's performance requires improvement?
A. Correct.
Q. And that, in the notes, Dr. DeMars describes specifically some of the struggles that Dr. Hsu had with his performance?
A. No. She describes completion of medical records and satisfaction scores with ambulatory encounters.
Q. Okay. Do you disagree?
A. You, her -- the comment by Dr. DeMars is that he struggles with timely completion and patient satisfaction scores and, furthermore, there is an ongoing performance improvement initiative within the division that Dr. Hsu will play an integral role.
Q. So you don't see this as continuing concerns about

Dr. Hsu's performance?
A. I do see -- I'm reading what I think -- you know, his performance, you've asked me to reflect on what Dr. DeMars has written. Dr. DeMars has commented. The most recent -- you asked me to look at January 2017 -- indicates struggling with medical records as well as his patient satisfaction scores, and he's involved in an improvement initiative. Do I view this as an opportunity for improvement? Absolutely.
Q. Returning to Merrens Exhibit 1, the June 3rd 2016 letter from Dr. Porter, looking at the final page, Bates 1, PORTER185, Dr. Porter says, "It is my opinion that employment at DHMC, with the clinical demand and his observed deficiencies, is not appropriate for Dr. Hsu. It is a disappointment, but I believe it true".
Are you surprised that a recommendation of that magnitude was not brought to your attention?
ATTORNEY SCHROEDER: Objection, calls for speculation.
THE WITNESS: I don't know what the response was to this letter around the specifics. So I just have her, her letter from June, the last documented -- anything I know from Dr. DeMars is written here in this performance evaluation. So I don't know any more.

(Indicating Exhibit 2.)
ATTORNEY SCHROEDER: Make sure you just identify for the record which document you're talking about. So Exhibit 2, Exhibit 1, just so that you --
THE WITNESS: I apologize. You're asking me if I'm surprised about the nature of what she's saying here and would I not be apprised. I was apprised that there were challenges within the REI division with Dr. Hsu with his documentation and his capability of his practice and that they had a plan to help mitigate that. That was my understanding until the program ended. That would be the extent of, of my knowledge.
I didn't, I wasn't aware, I wasn't -- I was not apprised of Document 1, nor did the chair raise to me significant concerns that would require my involvement, the Chief Medical Officer's involvement, or other people in the organization around his care or capability.
BY ATTORNEY KRAMER:
Q. My, my question was specifically whether, sitting here today, you were surprised that you did not learn about the magnitude of Dr. Porter's position on this, specifically that she viewed termination of Dr. Hsu as the appropriate next step?
A. I think that would be speculative. I, I, she has

a very strong opinion about, about Dr. Hsu and his capabilities. I completely respect that. But it would be speculative for me to say why I shouldn't have seen this document, and I don't know what happened following her June 3rd communication referenced in Document 1 at the department or the, the division level.

Q. To be clear, I'm not asking you to speculate why --

ATTORNEY SCHROEDER: Objection, objection. He's asked and answered the question the best way he sees fit.

BY ATTORNEY KRAMER:

Q. I'm not asking you to speculate about the document. To be clear, you, you're not able to tell me whether, sitting here today, you are surprised or not?

ATTORNEY SCHROEDER: Objection, once again, calls for speculation.

THE WITNESS: You're asking me whether I'm surprised or not about reading a document that I had not seen before, whether, whether I'm surprised now reading it that this was Dr. Porter's opinion in 2016?

BY ATTORNEY KRAMER:

Q. No. Surprised that, that, in a situation where a physician had a strong opinion like this suggesting termination, that that information wouldn't have

reached you.

A. If there was -- what I don't -- the information that would have reached me was a plan that Dr. DeMars, in the role of the chair, would have put together incorporating Dr. Porter's opinion as outlined in this Document 1 around what the next step should be. Dr. Porter would have -- Dr. DeMars, as the chair, would have come to me and said, We have a plan incorporating some perspectives on his care, his capability, his documentation, and a host of other things, and that would have been under her purview.

So I'm not -- there are, there are, there's management of people and their care that happens in a department, and, if I need to be involved, I, I can be involved. So I don't know. This is one document outlining Dr. Porter's perspective. I don't know what the next steps were that occurred within the department. I've already stated that I clearly understand that there were efforts to help Dr. Hsu on many levels with documentation and care and coordination, and, in my meetings with Leslie which occurred on a monthly basis, I think I was apprised at that level.

Q. Do you have monthly meetings with all of the chairs?

A. Yes.

Q. If a physician performed a procedure without informed consent of the patient, how would you expect that Dartmouth-Hitchcock would handle the situation?

ATTORNEY SCHROEDER: Objection, calls for speculation. You can answer.

THE WITNESS: There are processes for reporting situations that aren't consistent with expected practices that involve notifying the patient, involving risk, and a whole range of, range of things that happen.

BY ATTORNEY KRAMER:

Q. Would you agree that performing a procedure without informed consent is outside the standards of acceptable care for a provider at Dartmouth-Hitchcock?

A. Yes.

Q. If there were such a situation, would you expect it to be brought to your attention?

A. Not necessarily.

Q. When would it come to your attention, and when would it not?

A. There are situations where they realize that they didn't provide the right consent. They have a discussion with, with the family, the patient. They involve risk. They, they're open about things, and,

and the situation is discussed, and there's a plan going forward, and I'm not necessarily involved. I'm, I may be involved if there is more global concern and if the chair feels like they will, they feel like this is something that is affecting patient care or the ongoing function of the department.

Q. When issues go to risk management, do you get any sort of regular report from risk management? How does information filter up from risk management to you?

A. It depends. Sometimes they are filtered up involving the Chief Medical Officer. If there's a case around consent or process or a range of things that the CMO may be involved as the medical officer for the, for the institution, for the hospital, MHMH. So the CMO may be involved if that's an ongoing concern. It can be broached with the Chief Medical Officer, or it may, it may be brought to me, and there are certain situations in which I'm apprised of it and I bring it back to the Chief Medical Officer for the Chief Medical Officer to be involved with risk and the Medical Staff Office and other people that are involved in understand a situation.

Q. Do you know of any situations involving Dr. Hsu that went to risk management?

A. I'm not aware.

Q. Let's turn now to the spring of 2016 when Dr. Seifer was hired. Do you know Dr. Seifer?
A. I don't.
Q. Have you ever met him?
A. Yes.
Q. When did you meet him?
A. When we announced the closure of the program.
Q. Had you met him prior to that?
A. No.
Q. And, for the record, who is Dr. Seifer?
A. Dr. Seifer was the Division Director for Reproductive Endocrinology and Fertility at Dartmouth-Hitchcock.
Q. What do you know about the hiring process for Dr. Seifer?
A. I know that he was recruited from Oregon Health & Science University. He had been recommended by Richard Reindollar earlier on. I believe he had been working somewhere else previously. I think, when Rich decided to leave Dartmouth-Hitchcock, Dr. Seifer took the role at OHSU. Leslie DeMars reached out to him to recruit him to Dartmouth to join the, the REI division here.
Q. Was the position posted for any sort of recruitment efforts?
A. I think they were looking for another member of

the division. I don't know how it was posted or what the, what the, what the recruitment process was.
Q. Are positions normally posted, or is there sometimes a, just a one-on-one individual recruitment effort?
A. Usually, we have a -- usually, we have a search process. That may be a national search. It may be, it may be more informal. It may be an internal search. I'm not aware of the process that was, that the REI division director recruitment undertook.
Q. If you could, just tell me a little bit more about what's the normal course for hiring, especially at a division director level?
A. Typically, it involves a national search, reaching out to national societies and meetings, print ads, networking amongst people, applicants, a search committee, a winnowing process, interviewing potential candidates, and making an offer.
Q. Did you have any concerns about hiring of David Seifer in 2016?
A. Yes.
Q. What were those concerns?
A. I led our credentials committee at that time, and his hiring was -- initially, he was hired in an administrative role to join Dartmouth as the division

director, and then he was brought in a short period of time to be into a clinical role. So there was some process there that we had some concerns about that, and, independently, members of Oregon Health & Science reached out to our faculty with concerns about his practice, and those were discussed at our credentials committee and with Dr. DeMars.
Q. What was the nature of the concerns of his colleagues?
A. The concerns were that he didn't have the breadth of -- he, he had a more limited focus in terms of his approach to reproductive endocrinology, although accomplished and everything. His type of -- he had a different practice style and maybe different capabilities than his colleagues at OHSU, and those, those perspectives were shared with members at Dartmouth, and there was, there was the suggestion that he had also been asked to cease providing care in some areas, and in my role I asked for more clarification around his status at OHSU, the procedures he was asked to stop, and whether this had been fully vetted for his role here.
Q. You described that Dr. Seifer had a limited breadth of skills. Did you have any concern about whether somebody with a limited breadth of skills was a

good fit for a regional medical center like DHMC?
ATTORNEY SCHROEDER: Objection, mischaracterizes his testimony. I think he said that OHSU said that. You can answer.
THE WITNESS: The, I -- he had a different set of skills. I'm not trying to say he had -- I think there were things that he assumed that he would not have to do as part of that practice that the colleagues at OHSU routinely did, and I can't be specific about this. I think they were more adept at doing certain procedures that he thought would be done by a technician, and he wasn't necessarily -- that wasn't part of his practice.
BY ATTORNEY KRAMER:
Q. Did anybody else have concerns about Dr. Seifer?
A. I think there were other members of, in the department who were contacted that were concerned about whether he would be the, the right fit.
Q. And at Dartmouth-Hitchcock were there other members of, I guess, the credentialing committee who had concerns about whether to bring Dr. Seifer in?
A. I think there were other members of the committee that shared our concern.
Q. Who?
A. I can't remember who was on the committee at the

time, but we had a committee that reviewed all applicants. We actually had Dr. DeMars come before the committee to explain her rationale for bringing him forward and her understanding. She explained that she thought the role here would be different, he would be a good fit and would be -- he was an accomplished physician in his own right and that she was, had expressed that she was not pleased that people from OHSU had contacted us and expressed this concern without her being able to counter it to some degree, but there were concerns, and she ensured the committee and myself that she would take personal responsibility that he would be a success.

Q. Did you rely on her statements of support of Dr. Seifer in -- well, I guess I should back up.

Did you, did you feel that your concerns were adequately addressed?

A. Yes.

Q. And did you -- I don't know what the right word is -- approve, endorse, give a seal of approval to the hiring of Dr. Seifer?

A. We allowed her to hire Dr. Seifer with the understanding that she would ensure that he would be a success in this role.

Q. What did that mean?

A. That she was able to convince the committee that the views expressed by people at OHSU were not relevant to the role he would, he would enjoy here. She had reached out to other places that he had practiced previously and had endorsement from them, and there was -- I think her belief was that this was just a bad fit for him out there and that he would be in a better position in the role at Dartmouth. So the committee approved his -- he was credentialed and privileged, and he was hired into the clinical role from just the administrative role that he had been brought to Dartmouth to do.

Q. And was Dr. Seifer a success?

A. I don't know if I can comment on that. I don't have any reason to believe that he, that he wasn't. I'm, you know, he was brought to be -- I don't -- there was no discussion I had from his arrival and discussions with Dr. DeMars that it was otherwise.

Q. You didn't hear any concerns about him?

A. No. I -- so let's go back. I'm just trying to think about what role I was in at the time, the Chief Medical Officer role. I think what, what I knew was that this was a group that had a fair amount of discord between the three members, lack of agreement, concern about capabilities, and so I think there was a level of

dysfunction amongst all the members in terms of how they viewed their role, the spectrum of the care provided, and collaborative work amongst the three of them. So I think, at a high level, I think that was a theme.

Q. Do you know if, at that time when Dr. DeMars was recruiting Dr. Seifer, whether Dr. DeMars thought that the REI division required different leadership?

ATTORNEY SCHROEDER: Objection, calls for speculation as to what Dr. DeMars thought.

THE WITNESS: She was recruiting for a division director. That's all I know.

(Deposition Exhibit 3 marked.)

BY ATTORNEY KRAMER:

Q. Let me know when you're done reading.

A. I'm done reading.

Q. For the record, this is Merrens Exhibit 3, and it's DH21253, an email from Leslie DeMars to Maria Padin on May 12th 2016. At that time, what was Dr. Padin's role at D-H?

A. 2016, she would have been -- she was the Chief Medical Officer at that time.

Q. And you were Chief Clinical Officer?

A. I was either transitioning to the chief. I can't remember the exact date I became the Chief Clinical

Officer, but she reported to me. Maria also, interestingly, was on the credentials committee too. So you had asked who was on the committee. She would have served on that committee as well, but she reported to me in this role.

Q. Have you seen this email before?

A. I have not.

Q. You have not? Okay. In this email Dr. DeMars says that she is concerned that, "If we cannot hire Dr. Seifer, that I will have to shut the program down", meaning the REI division. Were you aware at that time that Dr. DeMars had concerns that they may need to shut down the program?

A. I don't believe I was. I know that -- no, I, I was not aware that they felt they had concerns about shutting the program down.

Q. During, and, during this time, you met with Dr. DeMars on a monthly basis, right?

A. This period, this -- I'm, so I'll have to go back to my dates about when I took over as the Chief Clinical Officer that, for whom the chairs reported. I think I took over that role in the fall of 2016. So this might have been a period of time where I was still the system CMO. I worked closely with Maria but didn't have the same kind of reporting relationship with the

chair, who would have been Leslie at the time. But this, you know, this is a communication from Leslie to the Chief Medical Officer outlining her concerns.
Q. When you were the, the system CMO, did you have regular meetings with the department chairs?
A. I did not.
Q. You did not? This document says that Leslie DeMars describes, quote, "Albert Hsu, my junior member, is hanging by a thread". Were you aware at that time that Dr. DeMars viewed Albert Hsu as hanging by a thread?
A. I did not. I knew there were concerns. It would be speculative to provide a definition of "hanging by a thread". She's clearly stating she's concerned, concerned about the division, its leadership, and Misty being on medical leave. So I think she's describing a situation where there's concern about the ongoing provision of care, and I think that's what she's expressing here and the urgency that she felt in recruiting David Seifer. I was aware of all those issues, her urgency and the challenges within the, the division.
Q. When you, you described that there was a meeting of the credentialing committee where Dr. DeMars came in --

A. Yeah.
Q. -- and explained the need to hire Dr. Seifer and her reasons why he, he should be hired. Did she express these concerns?
A. She did not bring up the medical leave of Dr. Porter, nor anything about Dr. Hsu. She, her characterization of the recruitment was that he was a talented physician, someone that we tried to recruit previously under the previous chair, someone that she thought could bring the division together, and was countering what she perceived as a mischaracterization of his capabilities by his colleagues at Oregon Health & Science.
Q. Did she explain why she was so convinced that it was a mischaracterization?
A. No.
Q. In this email to Dr. Padin, she says, "I do feel that the evaluations that he received from his, quote, 'peers',close quote, were vindictive". Do you have -- can you explain at all to me why you think she would have said this?
ATTORNEY SCHROEDER: Objection, calls for speculation.
BY ATTORNEY KRAMER:
Q. I know that's speculative, but --

A. She expressed this when she met with the committee, and that was a similar perspective. I don't know why she thought that. I think her -- what we understood at the time was that he may have had a falling-out with his peers over issues that were not around -- they just didn't -- it wasn't a good fit, and I think she was saying this wasn't, he didn't have a good fit and this is going to be a better fit and didn't feel like their perspective as his peers was justified. I think that's how we understood it.
Clearly, my understanding was that this hire was hers to ensure success. That's how she left the meeting.
Q. And, if it was not successful, what was the consequence? What was understood to be the consequence?
A. That it, this was, you know, this was on her and her role and her, you know, if there's decisions about her competence as a chair and her ability to lead this division, if this is a -- you know, this would be -- she would own this in terms of a decision she made at a leadership level but had implications for the organization.
Q. It seems like this situation with the hiring of Dr. Seifer stands out pretty clearly in your mind. Is

that a fair assessment?
ATTORNEY SCHROEDER: Objection, argumentative.
THE WITNESS: I remember the, the details of this event, because it was atypical for us to bring a physician to our credentials committee where there was this degree of outside contact and discussion. Furthermore, in the State of New Hampshire, if someone is denied privileges after going through a Medical Staff Office hearing, it's a reportable event to the National Provider Database.
So we take it with great seriousness around the deliberations that are incurred there, often to the point at which we will ask a chair to present a case anonymously for some insight of whether this might, might pass or fail. So we take this very seriously, knowing that there's some, there's some law in New Hampshire around, around the processes. So I think that's an answer why I remember this.
BY ATTORNEY KRAMER:
Q. If a provider had concerns about the clinical competency of another provider, would you expect them to bring those concerns to the Chief Medical Officer?
A. They could. They could bring them to their division, division lead. They could bring it to their

chair. They could bring it to the Chief Medical Officer. They could bring it to me. We have an organization where, if you contact our CEO, she'll meet with you. So there are a lot of areas in which people can express concerns.

We have a compliance hotline, an 800 number. I mean, there are lots of ways that people can contact someone if they have concerns about someone's care that may affect patient care. There's no boundaries. I mean, people contact people all the time, and, and we're, and we're receptive. So, while there's a hierarchy and we've spent a lot time talking about the reporting levels, people reach out and express concerns all the time.

And, you know, we began this discussion with me talking about my initial relationship with Dr. Porter was borne out of very similar, very similar concerns and, and a very similar situation, concerns, want to bring it to your attention, let's figure out how we can do things. So there are lots of opportunities to express concerns.

Q. To clarify that a little bit, my question was about clinical competency.

A. Correct.

Q. In this situation involving Dr. Porter and

Dr. Reindollar, I don't believe there were any concerns about clinical competency.

A. No.

Q. Am I mistaken?

A. No, but it was concerns around, How do we comport ourselves as members of a division? How do we work together? There were a lot of questions about interoperability and how do we work together, and I think that's very similar to the events that we're discussing here now.

Your question about someone competent and whether that could be expressed clearly, could be brought to the Chief Medical Officer. We have bylaws that express and detail concerns about physician practice and competency that anyone can raise. Don't even need to be a physician.

Q. And, if there were a department chair who had concerns about clinical competency of a provider in that department, would you expect the department chair to bring those concerns to the CMO?

A. Correct.

Q. And what would you think if a department chair had serious concerns about clinical competency and failed to bring that to the attention of the CMO?

ATTORNEY SCHROEDER: Objection, calls for

speculation. You can answer.

THE WITNESS: I think, if there were serious concerns around a practitioner, that we would want to know about it, either at the Chief Clinical Officer level or at the Chief Medical Officer level.

BY ATTORNEY KRAMER:

Q. Did you know that Dr. DeMars had immediate concerns about Dr. Seifer's clinical competency?

A. I did not.

(Deposition Exhibit 4 marked.)

Q. Here you go. This is Merrens 4. I'll give you a minute to review. Let me know when you're done.

(Brief pause.)

A. I've finished reading it.

Q. All right. For the record, Exhibit 4 is a text message chat between Leslie DeMars and Richard Reindollar. For the record, who is Richard Reindollar?

A. He was the previous chair of obstetrics and gynecology before Dr. DeMars.

Q. And what's the date on this exchange?

A. July 28th 2016.

Q. How soon after the hiring of Dr. Seifer was this?

A. I don't know his hire date. It's within a year, I believe. I don't, I don't know the date he was hired.

Q. He was hired in May of 2016.

A. Okay. So it would be two months, then, by my math, maybe two and a half.

Q. So shortly thereafter?

A. I would agree.

Q. In the first message Dr. DeMars says, "Richard, I'm not sure that DS is clinically competent". And DS here means Dr. David Seifer, or at least that's my read of this, that this is David Seifer. Do you have any reason to believe that this is not about David Seifer?

A. I do not.

Q. She says, "I don't know what he's been doing for 25 years, but I'm not sure it was IVF". Are you surprised -- well, have you seen this document before?

A. I have not.

Q. Are you surprised to learn that, as of July 2016, Leslie DeMars had concerns about whether or not David Seifer was clinically competent?

A. I am.

Q. Tell me more.

A. I would have expected, if she felt he was clinically not competent, she would have brought this up for discussion.

Q. And, looking at the, her next message, there's a message from her at 8:28 p.m. Then there's a response from Dr. Reindollar, and then she has another text at

8:47 p.m. in which she says, "I have heard separately voiced concerns from nursing, anesthesia, and ultrasound techs. The lab folks complain about bloody aspirates and low egg counts". Were you aware of any of those concerns at this time period?
A. I was not.
Q. And the, the same question: Are you, are you surprised that these concerns weren't brought to your attention?
A. I am.
Q. And why?
A. She has a new hire that she's concerned about his competency, and I would have expected her to bring that for more discussion, and, if this is involving other areas, it should have been either expressed to myself or the Chief Medical Officer.
Q. Do you think it's a reflection of her leadership that she did not bring it to your attention?
A. Possibly.
Q. Can you tell me more?
ATTORNEY SCHROEDER: More about what?
BY ATTORNEY KRAMER:
Q. More about what you think. Why do you say "possibly"?
A. I think that I should have -- someone should have

known about this. If this was -- if she had clear concerns about someone being not competent to perform their work and is having this kind of exchange, this should have been a broader discussion about how to mitigate this in her perspective.
ATTORNEY KRAMER: I'd like to take a break for lunch.
(A recess was taken from 12:27 p.m. to 1:26 p.m.)
BY ATTORNEY KRAMER:
Q. Before we took a break, we were talking about Dr. Seifer, and I'd like to continue talking about Dr. Seifer for now. Did you become aware of a 90-day review process for Dr. Seifer?
A. No.
Q. As part of the credentialing committee, was there anything brought to your attention about a 90-day review of Dr. Seifer?
A. No.
Q. Is it typical for there to be a 90-day review of a new provider?
A. I think there is, there are processes in place to kind of review where people are, but I'm not sure it's formalized as a standard, standard process.
Q. Do you recall having a meeting in November of 2016 to review a focused practice performance review of

Dr. Seifer?
A. So we have a process called an FPPE where we do, when we -- so that's, so I think you're, you're -- we have, when someone's hired, there is an FPPE process that happens with a new hire, and then there can be other things. FPPE is a focus if there's an issue like if someone raises an issue around competency, or we have different ways of invoking that process. But I'm not sure I was aware of an FPPE with Dr. Seifer.
Q. Is an FPPE the same thing as a 360-degree review?
A. No.
Q. Let's mark this as Merrens Exhibit 5. Please take a minute to look this over, and we'll discuss it when you're ready.
(Deposition Exhibit 5 marked.)
A. Is the date on this the same date that's on --
Q. Yes, so this is --
A. This, the item, this document that you're giving me is undated, and I don't know who the author is.
Q. This is an email from November 23rd 2016 from Michele Scearbo -- I'm talking about the cover email --
A. Okay.
Q. -- to Leslie DeMars and a few other people. It attaches a document. The document that's attached is the two, the second two pages of the exhibit. So the,

the cover email is DH25549, and then the two pages that are attached are 25550 and 25551. This is, my understanding of this -- and tell me if you think this is something else -- is that this, the attached document, is the FPPE review compiled by Dr. Leslie DeMars of Dr. Seifer.
A. I just don't know what date this was compiled and who, who performed it, like, who, who authored this document that you're sharing with me.
Q. Have you seen this before?
A. I don't think I have. Maybe I have. I don't know. I'm just trying to -- it says my name, "The progress was reviewed today by Ed Merrens -- in preparation for bringing to the credentials committee".
Q. Let's start with that. This email from Ms. Scearbo references a progress review by you, Ed Merrens, Maria Padin, and Jocelyn Chertoff.
A. Okay.
Q. Do you remember conducting a, a progress review of Dr. Seifer?
A. I don't specifically remember that.
Q. Do you remember receiving this attached --
A. I don't.
Q. -- performance review?
A. I don't remember receiving this. It's possible

that I did, but I, I don't remember receiving it.
Q. Do you remember discussions about having an FPPE for Dr. Seifer?
A. I don't remember having those discussions. So I think what happened was he came in and there was a plan around how he would, he would come in, and, clearly, there was a proctoring plan put in place. I don't -- the progress was reviewed today by Ed Merrens -- preparation for -- so it sounds like there was a plan. Can I read this document? I'm not exactly sure kind of like, so --
Q. Absolutely, please do.
A. Yeah.
Q. Please do.
A. I'm just -- the document is a little bit out of context. I don't know the date. I don't know the author, and I don't know if this is the --
Q. This is how we received the document.
A. Okay.
Q. I don't know if it exists in other forms --
A. It's okay.
Q. -- within the Dartmouth-Hitchcock servers. We haven't -- it hasn't been produced to us in a different way as far as I know. So, please, take your time, look it over, and let me know when you're ready.

(Brief pause.)
A. Okay. I've read the document, and the, Michele Scearbo oversees our Medical Staff Office. So now I understand it in context. It is quite likely I was part of this discussion around where things were. We don't -- we do an FPPE if there was a, if part of his hire was that we would hire him under a proctoring plan, like his practice was limited in some ways or he did things differently at OHSU or wasn't -- you know, this document refers to his capability as it relates to ultrasound. There would be a proctoring plan put in place, and that sounds like what Leslie -- and I'm assuming Leslie is the author.
But we don't always call it a 360 review. 360 review is something else. So I think that's how Leslie characterized it. So I don't remember the specifics of this meeting three years ago, but, as a member of credentials and privileging and following up on someone that we, that there were concerns were raised, this would be the process.
Q. And it's your understanding that this attached document, these two pages, are Dr. DeMars's focused practice performance review of Dr. Seifer?
A. You know, I can only assume that's the case.
Q. This document says that Dr. Seifer started on June

15th 2016. We had spoken earlier about when his start was. Does this refresh your recollection of when he started?
A. If that's the start date, then I accept that.
Q. And, looking back at Merrens Exhibit 4, which is the chat messages between Leslie DeMars and Richard Reindollar, that was at the end of July 2016, which, therefore, would have been roughly how long after his start date of June 15th?
A. So a little bit more than a month. Five weeks.
Q. This document says that you and a few others reviewed the progress in preparation for bringing it to the credentials committee. Do you recall bringing this review to the credentials committee?
A. I don't remember kind of -- so Michele has asked Leslie for some specifics that are outlined here in Document 5, 1, 2, and 3. I don't know, I don't know what the response was. Those would be important things to bring back to the credentials, questions that we would bring back to the credentials committee.
Q. How many people are on the credentials committee?
A. At that time, there might have been ten people.
Q. Were you, Maria Padin, and Jocelyn Chertoff members of the credentials committee?
A. Yes.

Q. Do you know why the three of you would have been a subgroup of the credentials committee?
A. Jocelyn chairs the committee, and Maria and I are, you know, the Chief Medical Officer and, at that time, the, the, you know, Chief Clinical Officer for the organization involved.
Q. Who is Patricia Spencer? I see she's a recipient of this email.
A. She's the, she is the director of the medical staff office, and Michele Scearbo works for her. They're, they're involved in the medical staff office for D-H. So anything that comes before the committee, they organize and collate and follow up on.
Q. Let's mark this as Merrens 6.
(Deposition Exhibit 6 marked.)
Are you done?
A. I'm done.
Q. Okay. This is an email from November 30th 2016 from Leslie DeMars to Michele Scearbo responding to the email that we had just been looking at in Merrens Exhibit 5. The Bates number of this is DH25566. Do you recall if you ever received this email that's at the top? In this version, it's only addressed to Michele. Do you recall if this ever came to you or if there was, if this information was provided to you?

A. I don't recall. I'm not saying I didn't receive it or understand the contents or have it discussed, but I don't recall receiving the email.
Q. In this document Dr. DeMars says Dr. Seifer has not been the subject of repeated complaints by patients, staff, or D-H colleagues. Do you view that as an accurate statement?
A. At the time, I was not, I would have no information to think the contrary. I didn't -- I wasn't in receipt of information that would make me think otherwise.
Q. In this review process, did you rely on the statements that Dr. DeMars conveyed to you?
ATTORNEY SCHROEDER: What review process?
BY ATTORNEY KRAMER:
Q. This FPPE review process.
A. She's, she is charged with, with doing so. So you -- we've asked her for follow-up. Michele asked her for follow-up on a number of items, both in Document 5 and Document 6, and this is her response. So she has delineated her response to these. So that was the response that we got from the, the chair.
Q. As part of this FPPE, did you see any of the underlying reviews, or did you only receive the analysis that was conducted and synthesized, for

example, the two pages that are attached to Merrens Exhibit 5?
A. I would have typically not seen the primary data or all that information. It would have been a report out in a summary document as shown in Document 5.
Q. Do you rely on the accuracy of the summary that's provided?
A. Yes.
Q. Did you have any reason to believe that the summary provided by Dr. DeMars here in Exhibit 5 not accurate?
A. No.
Q. If it was inaccurate or incomplete, would that be a cause for concern?
A. Yes.
Q. Let's take a look at -- so what I'm going to do is give you a few exhibits and have you review them. These are the underlying reviews that were provided to Dr. DeMars as part of this FPPE process.
A. Okay.
Q. So bear with me. This is Merrens 7.
(Deposition Exhibit 7 through 9 marked.)
ATTORNEY KRAMER: And, for the record, Dr. Merrens is now reviewing three documents that I've handed to him, Merrens Exhibit 7, Merrens 8, and

Merrens 9.
THE WITNESS: I've completed reading the documents.
ATTORNEY KRAMER: Okay. Thank you.
ATTORNEY SCHROEDER: I assume this is a subset of what related to the review, or is this just these three?
ATTORNEY KRAMER: These are the three that we have.
ATTORNEY SCHROEDER: I think there's others, but I could be wrong.
ATTORNEY KRAMER: There is another set of reviews that occurred in February of 2017. I don't know if you're thinking of those review documents.
ATTORNEY SCHROEDER: No. I was just wondering if there were -- because it's just, it's just Sharon Parent, Beth Todd, and Misty, and I just didn't know whether there were others as part of this review process or not.
THE WITNESS: Well, I think on Document 8 in the document that Leslie sent out, there were a number of recipients, and I don't know if they replied or if their information is part of his 360.
ATTORNEY KRAMER: I don't know. I don't know. If there, if there were other documents, we

don't have them. So, Don, if you want to check into the --
ATTORNEY SCHROEDER: Yeah, I mean --
ATTORNEY KRAMER: If you want to look into that, we're happy to get more documents.
ATTORNEY SCHROEDER: Well, I don't know that that's -- quite frankly, you know, whatever documents existed, we produced. So, given the fact that these are in the 26,000 range, I don't have at my fingertips knowledge as to whether or not the other people listed here gave any feedback or not. I just don't know that. I just wanted to -- I was curious as to whether or not this was just a limited subset or not. I don't know the answer to that right now, which is why I asked the question.
ATTORNEY KRAMER: No, I don't believe that it's a limited subset. These are the, the ones that we have from this period of time. There are other reviews from a few months later --
ATTORNEY SCHROEDER: Okay.
ATTORNEY KRAMER: -- that we're pulling together, and we'll go over those.
ATTORNEY SCHROEDER: Okay.
BY ATTORNEY KRAMER:
Q. Looking at what's been marked as Merrens 7, the

review from Dr. Porter, her review is two pages long and raises a number of specific concerns about Dr. Seifer. Having, since you have now looked at Dr. DeMars's synthesis, do you think that the specific concerns that Dr. Porter raised in her review are fairly expressed in the synthesized review from Dr. DeMars?

ATTORNEY SCHROEDER: I think he said he was, he assumed that Dr. DeMars did what was part of --

ATTORNEY KRAMER: Okay. Well, I'm asking the question to Dr. Merrens. I don't hear an objection.

ATTORNEY SCHROEDER: I understand. Objection. You're mischaracterizing his testimony. He said he assumed. So, objection, mischaracterizes his testimony. He assumed that Exhibit 5 was from Leslie DeMars. You're stating it as a declaration that it is from Leslie DeMars. I don't know that that's --

BY ATTORNEY KRAMER:

Q. I thought that we all came to the agreement that this was a document from Leslie DeMars. Maybe I misunderstood.

A. I will assume that that's the case. What I don't know -- I would say, at the outset, the characterization that, overall, the comments were positive juxtaposed with Dr. Porter's perspective with

what is written in the document that we attribute to Dr. DeMars are certainly at odds. What I don't know is that -- and I fully realize this is Dr. Porter's perspective limited secondary to her illness that she states in the document. I don't know if there are five other documents or six other documents that counter that, speak about things differently, and I'm not saying there are. I'm just saying, clearly, Dr. DeMars has her perspective on things that is not characterized in this document as, as --

Q. You just said Dr. DeMars. I think you meant Dr. Porter.

A. Dr. Porter's document, if you were to read -- when I read Dr. Porter's document and I read the document we're attributing to Dr. DeMars in Exhibit 5, it, I don't know how you would come up with the comments were positive. So I don't view this as a positive reflection on someone's practice. I wholly understand that. I never saw these review documents. I may have seen this document, her interpretation and presentation to --

ATTORNEY SCHROEDER: Just, what document are you referring to?

THE WITNESS: I'm talking about Document 5. Sorry.

ATTORNEY SCHROEDER: Just for the record.

THE WITNESS: Yeah, sorry. I have not seen Documents 7, 8, and 9 previously. Those documents ostensibly went to Dr. DeMars, who then crafted a document that we see in Exhibit 5, which details her perspective and review that would be shared with leadership, so --

BY ATTORNEY KRAMER:

Q. We spoke about whether the comments from Dr. Porter in Exhibit 7 are fairly synthesized into what we're attributing to Dr. DeMars in Exhibit 5. I'd like to also look at Exhibits 8 and 9 --

A. Sure.

Q. -- and ask the same question as to whether, in your view, the comments and the tone of the feedback in Exhibits 8 and 9 are at odds with or in accordance with the review from Dr. DeMars in Exhibit 5.

A. Speaking, let's just talk about Exhibit 8, because I'm looking at that. I think it is a little less specific than the, than the document produced by Dr. Porter in Exhibit 7. It talks about his vision and mainly about how he comports himself with the group and the expectations he has of them. It's more about his style, about, like, he demands people do things and how they do things, and he's not used to -- I think what

Sharon is reflecting is, like, the lack of a team-based focus and how he respects and works with a team. That's what I read from this evaluation.

If we go to Exhibit Number 9, produced by Elizabeth Todd, respectful, inclusive, focused on our division. I think these are a little bit more broad. I see how these could be interpreted as, as neutral, if not positive. They're not -- they don't have the specifics that, that are included in the, in document, in Exhibit Number 7 authored by Misty.

Q. How about the concern with referrals to REI and whether Dr. Seifer --

A. What document are you referring to?

Q. Exhibit 9. Sorry. I'm looking at Exhibit 9, the third bullet point about an issue that Beth Todd identifies with Dr. Seifer, specifically about whether he is able to handle certain referrals that went to him. Do you see that?

A. I do see it.

Q. Do you consider that to be a specific critique of Dr. Seifer?

A. I do.

Q. And do you, do you see any of that incorporated into Dr. DeMars's evaluation?

A. I don't see these specifics incorporated, nor do I

see it raised as a concern, if we're looking at the patient care aspect of this document.
Q. Let's look at -- I know we have a lot of pieces of paper here. I'd like you to look at Merrens Exhibit 6, Exhibit 7, and Exhibit 4. In Exhibit 7, which is Dr. Porter's evaluation sent to Leslie DeMars, Dr. Porter says that her observations are based on, quote, "Complaints or expressed concerns brought to me by numerous members of the department. I have referred all of these individuals to you", meaning Leslie DeMars, "for direct comment". Do you see that?
A. I do, or I did read it. I'm not sure what paragraph I'm in here. Yes.
Q. And would you agree that, based on, based on what Dr. Porter says, that she received a number of complaints about Dr. Seifer and that she sent those individuals to Dr. DeMars?
ATTORNEY SCHROEDER: Objection, assumes facts not in evidence. That's what she says in here, but there's no evidence that that actually happened.
THE WITNESS: So --
BY ATTORNEY KRAMER:
Q. My question is whether that's your understanding of what this says.
A. I understand that she received complaints by

numerous members and referred them to Leslie for direct comment.
Q. Do you have any reason to doubt the truthfulness of what Dr. Porter is saying about receiving complaints?
A. I do not.
Q. And, looking at Exhibit 4, which is the chat messages, Dr. DeMars writes, "I have heard separately voiced concerns from nursing, anesthesia, and ultrasound techs. The lab folks complain about bloody aspirates and low egg counts". Do you see that?
A. I do.
Q. Is it your understanding from this document that Leslie DeMars received complaints directly about Dr. Seifer?
A. Yes.
Q. And, now, looking at Exhibit 6, which is the response from Dr. DeMars to Michele Scearbo about Dr. Seifer's FPPE, Dr. DeMars writes, "Since this was an initial evaluation, I left Number 8 blank, reflecting the positive and negative comments in my narrative. Dr. Seifer has not been the subject of repeated complaints by patients, staff, or D-H colleagues".
Looking at these documents and based on any other

knowledge that you may have, is this statement accurate, that Dr. Seifer has not been the subject of repeated complaints by patients, staff, or D-H colleagues?
ATTORNEY SCHROEDER: Objection, that assumes facts not in evidence.
THE WITNESS: So I don't know about repeated complaints. She, she states in the text message that you have here in Exhibit 4 the lab folks complained about bloody aspirates and low egg counts. I have heard separately voiced concerns, complaints, however you want to phrase that, from nursing. So I think she clearly states that she's heard complaints. It's articulated in her text.
BY ATTORNEY KRAMER:
Q. What would you understand repeated complaints to mean? What's threshold for repeated complaints as opposed to just complaints?
A. Are you looking for a number, or are you looking for a severity? I'm not sure what the, what the nature of the question is.
Q. Well, I'm looking --
A. I don't know what "threshold" means in this case, in this question.
Q. I'm looking here at Exhibit 6 --

A. Um-hum.
Q. -- the email at the bottom of the page from Michele Scearbo in Subpoint 2 that, apparently, one of the questions in the FPPE was Question Number 8 --
A. Yeah.
Q. -- "Has the practitioner been the subject of repeated complaints by patients, hospital staff, or members of the medical staff?"
To your knowledge, is that a question that's on the FPPE?
A. I'm looking for the document that we have that -- I'm referring to Document 5, which is Leslie's --
Q. As another question, do you know what documents are compiled as part of an FPPE?
A. There would be certain categories of clinical care, quality, safety, knowledge. There's whole categories that are listed here. You know, assistance-based practice, interpersonal skills would be, would be certain components of the FPPE. Your question is -- let me go back to your initial question, which was the question about complaints and then Dr. DeMars's response. I want to make sure I answer your question.
Q. Sure.
A. I think there have been, there are what appear to

be -- she's clearly stated that there have been numerous complaints that are not reflected in, in the FPPE document that she submitted to the credentials committee.
Q. And do you have concerns about the accuracy of the statement in Merrens Exhibit 6, the statement that Dr. Seifer has not been the subject of repeated complaints by patients, staff, or D-H colleagues?
A. Yes.
Q. And what's -- tell me more.
A. From the evidence that I have in front of me here, there appears to be a disconnect between what she has received from the, the documents used to construct the FPPE and her own communications with the previous chair, which all surround issues of complaints.
Q. Do you know if there was a second round of reviews of Dr. Seifer in early 2017?
A. I'm, I don't recall.
Q. I believe it was part of, it may have been part of the Value Institute review.
A. So I know the Value Institute was involved in January and February around REI and the program in general, trying to understand how everything was working or not working or its level of functioning. I was aware of it, that they'd undertaken that. I

actually didn't know prospectively that they were doing it, but I discovered this later in the spring, that they had undergone some work with the Value Institute.
Q. Let's talk a little bit about the Value Institute, and then we'll get to these review documents. What programs does Dartmouth-Hitchcock provide for divisions or physicians or staff that aren't getting along?
A. So we have a, we have, we have provider relations. We have a variety of -- we have patient relations. We have, we have, we have people within human resources that can help with interpersonal relationships, that can help with team base. We can do team-based assessments like, Is this team functioning? Are there problems with how a team works in general in terms of taking care of patients?
We have opportunities through HR to deal with provider issues. We have the ability to look at it from a quality and safety standpoint. So, if there's a concern about how a procedure is being done or we've had a certain number of outcomes that we're worried about, we can bring the Value Institute in to kind of look at what are the processes and kind of do a full kind of map of processes to see where there might be opportunities for improvement or identify areas that are causing the outcomes that we're seeing. So there's

a mixture of human resources and quality and safety that we can bring to situations that are concerning.
Q. How does the Value Institute fit into Dartmouth-Hitchcock overall?
A. So it's, it's our, the Value Institute so is, is really our kind of quality and safety group who really deal with, How, how is a team providing the safest, most effective patient care, and what are the barriers to do so, and how do we understand that in terms of outcomes and how a team works? So, often, the Value Institute is brought in with HR in some overlap to kind of figure out kind of what's going on here.
So, if we've had a lot of turnover in an area or we've noticed we've had some adverse outcomes or there's a higher rate of something happening that we hadn't predicted, sometimes we go back to kind of, What are the processes, kind of like a Lean Six Sigma process that we lead, kind of Toyota production system, looking at how systems work, and then the people component of that is a part that HR is brought in as well.
Q. Does the Value Institute, is it always doing something, or is it there as a resource and it gets utilized periodically?
A. I think it's a resource that gets, that can, that

can -- it's always there. We're, you know, we're beholden to a whole range of reporting criteria for quality and safety that we do on a national, local, state level. That quality we report reports up to the Value Committee of the Board of Trustees. So there's a lot of reporting on quality and safety, and it has specific resources when we want to focus on areas that there might be a little bit more concern, either due to patient-reported issues or data that we're monitoring or interpersonal issues that might affect patient care. So they get involved there.
Q. Are people who work for the Value Institute only part of the Value Institute, or do they cross over into other roles?
A. That's a good question.
Q. Thank you.
A. The, the, there are people in the Value Institute that are, that are clinicians. There are some that are not clinicians. There are some people that work just in the Value Institute, and there are people that have roles in there from other, other places.
Q. You identified a number of support programs at Dartmouth-Hitchcock to provide help --
A. Yeah.
Q. -- if there is a struggle. Which of these

programs were used to support the REI division?
A. So I know that they engaged the Value Institute in early 2017 to understand some of, some of these issues about -- and I'm not sure of all the issues. I've not seen the Value Institute summary. I know that there was a lot of concerns about turnover of nurses in that environment, about concerns about staffing and the ability to continue to, to maintain essential staff. So they may have been involved.

I'm not sure. I don't know exactly the question that was asked to get them engaged, but, often, it doesn't take much to say, We need some help, and we're happy to help. So I know that they were involved in looking at a whole range of things.

This is also a highly sensitive area when we are talking about reproduction and oocytes and a whole range. So I think there's a high degree of sensitivity around, How do we do this right and make sure? So I think that was part of the interest as well.
Q. Were there programs utilized to support the REI division other than the Value Institute?
A. I think, I, I think HR was involved. I don't know the, I don't know the nature of the other support. I think much of what happened after the Value Institute kind of determined the viability was based on some of

their insights and other aspects of what was happening in REI.
Q. Did you look at any of the documents that came out of the Value Institute?
A. I have not seen those.
Q. Before you made the decision to close the REI division, you didn't look at the Value Institute documents?
A. Correct.
Q. Why not?
A. I didn't -- I wasn't provided the document. I had a kind of a summary report from Daniel Herrick, and not all the, the decision about the program was not solely based on the Value Institute approach. They were trying to figure out how to staff a program and what some of the issues were, and some of the issues that arose were things that we discussed with Daniel Herrick and Leslie and others. I didn't get a final report from the Value Institute. I think that was one insight into what was going on in REI.
Q. I think you said that the, the issue that was brought to the Value Institute was issues of staffing. Is that what you said?
A. I think there was concern about --
ATTORNEY SCHROEDER: Turnover in staffing.

THE WITNESS: I think I may have said turnover. So that may have been one component that the Value Institute was charged with understanding.
BY ATTORNEY KRAMER:
Q. Do you know if the Value Institute was charged with understanding any other issues in REI?
A. Usually, they go in and try to understand how, how the, how the group works together, what are the issues around how the staff interact with the clinicians. And my update about the, about the Value Institute report happened with Daniel Herrick and Heather Gunnell and Leslie later on.
Q. You said that you didn't see any summary report from the Value Institute. Did you see any preliminary reports?
A. No.
Q. Did you see any of the documents that were provided to the Value Institute?
A. No.
Q. What was the summary that Daniel Herrick provided you? And it sounds like it was, it was verbal in a meeting. Do you remember what he said?
A. There was a lot of dysfunction and they were unable to continue to adequately staff this, this area. We had lost nurses. We were on the cusp of losing, I

think, the last nurse in Manchester that, that did this, that was involved in, in REI. There had been a lot of effort at kind of working to figure out how the team could work better together, and that was not, not viewed as being a successful endeavor.
Q. In Daniel Herrick's view or in the view of the Value Institute?
A. I think that was Daniel's assessment of the Value Institute approach.
Q. Were any of the REI members sent to mediation? Is that a -- was that a program that D-H still had in place in 2017?
A. We can provide mediation for -- we, we tailor our interventions and support based on the situation. So, if someone, if people need mediation or they need to work with HR around provider interactions and how things are, that can all be something that can be afforded.
Q. Was there discussion that you're aware of about whether --
A. I don't --
Q. -- whether to send any of the providers in REI to mediation?
A. I don't know.
Q. Earlier, I had mentioned that there was a second

set of reviews of Dr. Seifer in February of 2017, and I asked if you had ever seen or heard about those reviews. To refresh me, had you ever -- did you know about the reviews, and did you see any of the reviews?
A. I don't recall the reviews in February of '17.
Q. Okay. I'm going to show you a number of the reviews. So I think, same as before, what I'm going to do is give you a set of these and ask you to review all of them, and then we'll talk about them individually as needed or one at a time. So, Dr. Merrens, if you would, read the exhibits I gave you.
(Deposition Exhibit 10 through 14 marked.)
ATTORNEY SCHROEDER: So that's five exhibits?
ATTORNEY KRAMER: Yes. So we have Exhibit 10, 11, 12, 13, and 14.
ATTORNEY SCHROEDER: Can we go off the record?
(A recess was taken from 2:19 p.m. to 2:25 p.m.)
THE WITNESS: I've read all the documents.
BY ATTORNEY KRAMER:
Q. Okay, thank you. Have you seen these before?
A. I have not.
Q. Each of these five exhibits, Exhibits 10 through 14, are in response to an email from Leslie DeMars. For example, let's look at Exhibit 10 on the second

page, the email from Dr. DeMars in February 2017 asking for assessments of Dr. Seifer. She says, "I asked you all for comments at the end of Dr. Seifer's initial evaluation period in the fall. It is time for another assessment".
Was this a standard protocol, to have another assessment like this?
A. I wouldn't say it was standard. I think there are areas where we hire a leader and there's informal processes around how things are going. I think this was following up on concerns that were raised early on and then coming back to let's readdress this in six months.
Q. Do you know what prompted Dr. DeMars to seek these reviews?
A. I, I do not know.
Q. At this point in February of 2017, was the credentialing committee still involved in any way with Dr. Seifer?
A. Probably not.
Q. Are you surprised that these evaluations didn't make their way back to the credentialing committee?
A. I don't know if they would go back to the credentials committee. There's certainly significant concern about a whole range of things that should have

made their way in a more formative way from the chair to myself. At the time, I was aware that there were concerns about Dr. Seifer's practice, Dr. Hsu's competency, and the overall workings within REI. I was not made aware of the specifics and the issues that were raised in these detailed replies.
Q. So we're clear, we're looking at reviews that were provided by Dr. Porter, Beth Todd, Dr. Judy McBean, Heather Gunnell, and Kelly Mousley. We've talked about Dr. Porter and Beth Todd. Do you know who Judy McBean is?
A. I believe Judy is a private practitioner, REI doc that did some part-time, did or does some part-time work with Dartmouth-Hitchcock but works in Brattleboro, maybe. I'm not -- I, something like that.
Q. Did you ever meet her?
A. I have not.
Q. Okay. And who -- we spoke about Heather Gunnell. At this point in time, do you know what her role was? Well, I can answer that question.
A. She was the practice manager.
Q. She was the practice manager?
A. Yeah.
Q. Yeah. And then Exhibit 14 is from Kelly Mousley. Do you know who she is?

A. I do not.
Q. What's your overall take of the review of Dr. Seifer provided in these documents?
A. I think it raises significant concerns on many levels.
Q. What are those significant concerns that you see?
A. Technical skill, standard of care, approach to patients, collaboration with the team, overall vision. I think, on many levels, it has significant concerns for the people that work with him and the overall function. I see hope that we can still get on track from a lot of the people, but I see significant concerns.
Q. At this period of time, were you meeting with Leslie DeMars on a monthly basis?
A. Yes.
Q. Did she talk to you during any of those meetings or other meetings about these concerns that were coming to her about Dr. Seifer?
A. No. In, in generalities, yes, that, you know, We're trying to get REI on board, and we're trying to -- we're working -- you know, I think the Value Institute approach was, How do we get, how do we have a different approach to how we do things, new processes, things like that, but not the specifics of a

reevaluation and here's the input that we're getting.
Q. How does this fit or not fit with what happened with the recruitment process of Dr. Seifer, that there were red flags, as we talked about, about his hiring; Dr. DeMars very much went to bat for Dr. Seifer -- that's my phrase, not your phrase -- and that Dr. DeMars acknowledged that she was taking responsibility for Dr. Seifer's success? Looking at these documents, what would you like to add about how this fits in with the, the recruitment process?
A. I'm not sure I understand the question. You want me to compare these reviews with the recruitment process?
Q. Yes. So I'll rephrase. That was a --
ATTORNEY SCHROEDER: Yeah. Objection, compound, multi-compound question.
BY ATTORNEY KRAMER:
Q. Fair enough. You described that, in the, in the hiring process for Dr. Seifer, you made it clear to Dr. DeMars that it was, that you were counting on her to take responsibility for the success of Dr. Seifer; is that fair?
A. Correct.
Q. Seeing that she received these reviews and didn't bring them to your attention, do you think she was

fulfilling that responsibility?
A. No.
Q. Can you explain a little bit more?
A. I, in my conversations with the chairs that I work with, the twelve chairs, I rely on them to bring concerns from the divisions and sections, and we talk about much less nuanced and much less involved issues than are represented here, and I was not apprised of this detail of information or the dysfunction that was occurring. I think that was brought to light to some degree by the Value Institute and people stepping in and seeing what the processes were like.
Q. But this information didn't come to you?
A. No, not at all.
Q. I think you described this as, these documents, as raising concern about Dr. Seifer's competency. If I'm misquoting you, tell me.
A. I think they question his competency, his skill. I think -- I'm just reflecting what I'm reading. You know, I think there, they describe someone who has a limited scope and may not be comfortable working with others or learning new techniques. I think they've, I think there's a theme through this that I, that I've read.
Q. At this point in time in February of 2017,

Dr. Seifer was the division director, correct?
A. Correct.
Q. And in that role he had leadership responsibility for the division?
A. Correct.
Q. Would it be difficult to maintain a functional division with somebody in leadership who had these issues as described in these documents?
ATTORNEY SCHROEDER: Objection, calls for speculation. You can answer.
THE WITNESS: I think these, these perspectives raise serious concerns about someone's capability to serve in a leadership role.
BY ATTORNEY KRAMER:
Q. Does it raise concerns about functionality of the division?
A. Yes.
ATTORNEY VITT: Take a quick break?
(A recess was taken from 2:34 p.m. to 2:43 p.m.)
BY ATTORNEY KRAMER:
Q. Okay. When did you start getting involved in discussions about potentially closing the REI division?
A. I think we started talking probably April of 2017, April or May, something like that, April.
Q. The closure, the closure was in May.

A. Then we --
Q. Well, the closure was announced in May.
A. Announced in May? It was probably April, beginning of -- I'd have to go back through the records of kind of when we first started meeting and talking about it. So sometime in early April.
Q. And who brought this up?
A. I think we began discussing it with Daniel, Daniel and Heather and Leslie and I. I mean, they'd gone through this Value Institute work. Daniel's done a lot around -- he's a Black Belt, so he's done a lot of quality improvement work. So I think he was saying, We've got a problem. We've lost a lot of people. I think we lost our nurse was the -- I think the staffing issues were just the last wheel to come off the cart. That was a big -- I mean, that was fundamentally the key issue is, like, we just didn't have any nurses anymore.
It's not all of the issues that are outlined here around dysfunction, incompetence, and technique. It's like we don't have a nurse. So that prompted us to really discuss kind of some of the bigger issues and to get down to the understanding and the recommendations to bring some of this to light, and I think Daniel was essential in bringing some of this to light.

Q. Was Daniel Herrick the one who made the recommendation of closing the division?
A. Yes. In our discussions it became a recommendation as we, as we discussed the issues at hand. We don't have staffing. We have some internal discord on probably every, every level, competence, patient interaction, issues with staff, process, patient complaints. So some of these began coming to light in those discussions, although I had not seen these documents.
ATTORNEY SCHROEDER: When you say "not seen these documents", identify what you're talking about.
THE WITNESS: The documents I'm referring to are Documents Exhibit 11, 10, 11, 12, 13, 14, relating to the review that occurred in February of '17, late February of '17, of 2017. I had not seen any of this, but the issues began percolating through that prompted our discussions.
I was informed -- I think it's late March, so a month after these reviews had been produced, we realized that, based on the work in the Value Institute and internal work, they have stopped recruiting new patients in the practice or have stopped, you know, accepting new patients as a result of the internal work. So I wasn't privy to Exhibits 10, 11, 12, 13, 14

as it relates to direct data, but now it becomes something that I'm apprised of in the context of the VP now meeting with me and the chair of, like, We have a problem.
BY ATTORNEY KRAMER:
Q. I want to make sure that I understand the context for this. During this period of time, let's say, January through April of 2017, you were having monthly meetings with Leslie DeMars --
A. Yes.
Q. -- in her role as chair?
A. Correct.
Q. Did you have periodic meetings with Daniel Herrick as well?
A. Yes.
Q. As what sort of meetings?
A. I work with Daniel pretty closely as it relates to perioperative work. He reports to the senior, SVP for the organization, but Daniel and I work on -- there are projects that I'm working on in other institutions. I work with Daniel on a lot of things.
I think he was engaged in the Value Institute work and beginning to understand, looking at budgets and working with Heather to begin understanding how some of this was evolving. I don't know if he was completely

apprised or aware of Exhibits 10 through 14 that we're discussing here, the data that was sent to him. I think he learned of some of this through the Value Institute process and just the staffing issues. So he's involved with, like, a budget and how do you run something, and when you can't, when you have turnover and you can't hire people, he begins to delve into what else is going on.
Q. And, at some point in, let's say it was maybe March of 2017, you had a meeting with Daniel and Leslie?
A. Yes.
Q. Was Heather at the meeting?
A. Heather might have been at the meeting as well.
Q. Anybody else?
A. I don't think so.
Q. And is this the first time that the idea was presented to you of, What do we do with REI? Maybe we should close it?
A. Yes. Well, I think we began to say, We've got a problem, and the problem was ostensibly we have a staffing issue, but it was, really, there were a lot of other issues that had not ever been discussed with the details that are described here.
Q. In that meeting --

ATTORNEY SCHROEDER: What are you referring to?
THE WITNESS: I'm sorry. The details that, that have been outlined in, in Exhibits 10 through 14.
BY ATTORNEY KRAMER:
Q. In that meeting -- maybe it was a series of meetings, or was it one specific meeting?
A. You know, I think we had maybe two or three meetings to discuss kind of where we go with this and pretty quickly made the assessment that this was not a viable program anymore for a number of reasons.
Q. In those meetings who, was anybody there other than the individuals that we had talked about, Daniel, Leslie, Heather, yourself?
A. That was the, that was the group. At a later point, we gathered together a larger group including HR and communications when we wanted to think about how we begin planning a discussion about this, but the initial planning and the decision with discovery of what the issues were with those four, those four principals.
Q. Did you talk about other options for REI other than shutting down?
A. It became quite clear that it, that the dysfunction and the inability to staff it were on so many levels that it wasn't something that could have

been resurrected. It was not clear that, that it was something that, that could be just, We'll do it light for a little while or do something else. It was pretty clear that, that it had gone too far. I, and I clearly had no indication whatsoever of the sentiments expressed in Exhibits 10 through 14, detailed issues from a, from people who were not only nurses but, but physicians.

I mean, I think that, while Misty is articulate in this, this is also a period of time where she actually wasn't there. So I think she's articulate in terms of her perspective on things being the long-term member, but she wasn't actually, in the moment, providing care and doing those kinds of things. But I think they were all connected in a lot of ways, and her, her purview for making assessments of the dysfunction of the group was somewhat removed, although I accept her opinion. But she wasn't working -- I don't think she was working at this time.

Q. Now that you've seen these documents, 10 through 14, does that change your perspective at all about the nature of the conversations that you had in -- let's say it was March of 2017 -- about the REI division?

A. I think it provides a lot more detail of what I had a, a sense of in the discussions with Heather and

Daniel and finally Leslie. I was never aware of this degree of detail in Exhibits 10 through 14, nor the detail that was expressed in the, in the exhibits, and I'm going to get the exhibit numbers wrong, but the ones, the review that happened six months into Dave Seifer's tenure.

Q. Who ended up having responsibility for putting together a plan for REI?

A. When you say "a plan for REI", what do you mean, the, the cessation of the program?

Q. Yes, what that would look like.

A. I want to make sure I'm answering your question.

Q. Yes.

A. When you say "a plan for REI" you mean --

Q. A plan --

A. I made the decision that this program was no longer sustainable with the current people that were providing care, the structure around everything that we're delivering or the nursing care. So I pulled together a team of administrative leads, human resources, patient relations, the whole spectrum of people that would be involved in, How do we communicate this? Our communications team, everyone was involved to kind of figure out how we might go forward and how we might plan this and, in a fairly short time course,

communicate that we were closing the program and terminating the providers.

(Deposition Exhibit 15 marked.)

Q. This is a document with Bates Number DH11253, and it's a, the cover document is an email from Daniel Herrick to Leslie DeMars with a copy to Sam Shields, and attached is an Excel spreadsheet pro forma for the REI program. Have you seen this before?

A. I believe I have.

Q. Have you seen the cover email or just the attachment?

A. I think I've seen something like this in the course of our discussion about how to go forward. I can't tell you that I have, that the same email was sent to me, but I remember seeing the financials as it relates to this and the, the discussions around how to go forward.

Q. Who is Sam Shields?

A. Sam leads -- we have a process, leads -- he's involved with the Value Institute and is involved in us developing programs that all of the departments lead in terms of an A3 process around improvement, how they view their finances, patient delivery. There's a whole range of things. So he's involved in -- the other thing is that I think we wanted someone to help manage

this project of how to shut down a program and how to do this the right way. So Sam might have been involved in the process standpoint.

Q. What is A3?

A. A3 is a, A3 really means the largest size paper that can be sent through a fax machine when the Toyota lean production system in the 1970s was all around transmitting information. So people had to come up with plans that they would put it on A3-sized paper. It's come to be a reference to a process in Lean Six Sigma and Black Belt, organizational dynamics around a process. It's a size, piece of paper that you put organizational process on. So it's called an, we lead an A3 process. That's probably a lot more than you wanted to know or Sunnie wanted to type.

Q. That's exactly what I wanted to know.

A. We've done a lot around Toyota production system, Lean Six -- we have -- this is what the Value Institute embodies is, How do you do processes, and how do you make sure that they work for patients? Sam leads all that.

Q. And is this part of what you had learned in the health care master set talk?

A. We do some of that, yeah.

Q. Looking at this document --

A. You seem really interested in that program.
Q. I am interested in it. I'm just curious. So here in Exhibit 15 Daniel says to Dr. DeMars, "I think we're ready to share our plans with Ed and Maria".
Does this inform your testimony about at what point in time it was that Daniel and Dr. DeMars came to you to discuss what to do about REI?
A. Possibly. I mean, I know that we met sometime in early, early April. We probably had some discussions. They went back and actually wanted to look at all aspects of the program. I think they had some inference about the things that were happening. Daniel wanted to put a finer point on it in terms of, What are the financials here around, around what this includes?
I think the important part, and we said this in our meetings, the decisions around program closure are not based on financials. It isn't based on what makes money or what doesn't make money. In the end this outlines a, a decision to close down a program, you know, IVF, that had a positive contribution margin and, and continued to provide services around reproductive endocrinology, in-house capability that loses money, but it was a capability that we thought we could maintain.
Q. This looks to me like it's confirmation that the

program was profitable at this time, right?
A. I think the total, the net total would -- yeah. So the operating margin was, I think, 177,849, correct. The money was not -- so, clearly, we look at these numbers, and we try to understand things. The decision to close this program was not based on, on financial information.
Q. On, on the third page of the document here, there's no Bates stamp, but it says on the bottom "IVF-REI Business Review April 17 - DPH".
A. Yeah.
Q. Under "Proposed Actions" the suggestion is, "REI Program on Hiatus". What I think you said a moment ago was that, as of this period in time, you had decided that the program was being closed --
A. Correct.
Q. -- not that it was a pause.
A. Correct.
Q. Can you explain a little bit more about why this --
A. I think what --
Q. -- says "hiatus"?
A. I think what Daniel's referring to, and I don't know, because we made a decision to close the entire program, is that reproductive endocrinology is

different than in vitro fertilization, and understanding that, while we may not be able to work with women to put them through cycles, harvest eggs, do implants and all this stuff, we still maybe, we have the capability within our expertise to manage the endocrinological aspects that may not require surgical and other intervention within our practice at Dartmouth-Hitchcock.
So, for example, we have medical endocrinologists that can provide consults for women that have reproductive endocrinological needs that is different than IVF. So we had to separate them just to understand a little bit what we would continue doing. So, on one hand, we would say, Let's support these six patients. Let's honor that. Let's get some plans in place about how, where patients can get care, but let's also figure out -- let's not add -- let's, let's plan for patients, patient referrals within the system. What is the kind of --
We didn't refer to this as a hiatus, but we did want to -- we thought we had the ability to manage the reproductive endocrinology needs to some extent. Does that make sense?
Q. I think so.
A. So this was one way of Daniel projecting, Here's

just the money associated with this, and from that we decided that we would move ahead and, and formally just close the program. The issue about REI and IVF is that you said, Who did you bring together when you made this decision? It's what do we do for all the patients that are going require this care? Is this something that we will change our, our insurance plan to make sure that our patients can get care elsewhere? Which we did. Are we going to make sure that we work with medical endocrinology to see women that might have endocrinological needs? Are we going to do -- those were some of the, some of the things that occurred.
Q. What's the difference between medical endocrinology and reproductive endocrinology?
A. So in, we have endocrinologists that deal with a wide range of endocrinological disorders and diseases, and there's some overlap with REI, and that. So someone might have a pituitary tumor that causes excess expression of a hormone that they might see a reproductive endocrinologist because their menses are off, or they might see a medical endocrinologist. So there's some overlap in terms of expertise in which that can be managed outside of REI.

(Deposition Exhibit 16 marked.)

Q. Thank you. So, before we get to this, was there a plan at some point to retain Dr. Porter to do GYN ultrasound work?
A. I think the, not as part of this work. At this time, I believe Misty was doing some work in that space. I know, at the time that we're talking in late April, I think she was working about 20 percent time. Some of that was at home reading, reading studies. Some of it was writing a book. I don't know the exact nature of her work. So there was a small subset of, of her work that was, that was clinical. I'm actually not exactly sure what she was doing. I don't think she was doing surgery at that time.
So there were discussions around her, what her, you know, what her role would be, and I even asked Leslie, Where do we envision this? I know, you know, Misty had a lot of expertise. I think her primary interest and passion and what a lot of those procedural things like ultrasound were around were actually around IVF and REI. So I think the, there was discussion about that, and, you know, and I've seen documents that I've authored which I've even questioned, What are the opportunities, how might we think of this, and how do we go forward?
Do you want me to read this document, or do you

want -- do you have --
Q. In a moment.
A. Okay.
Q. What's the basis for your belief that Dr. Porter was working 20 percent time in May 2017?
A. I think it came out in the discussions that -- I know she was only working part time during that period. I, that was just my recollection of the discussions we had about what was the kind of effort that was going on in, in REI and who was present and who was doing what. I'm not entirely sure, but I think it was a small FTE that she was responsible for.
Q. Who did you talk to about whether Dr. Porter was performing surgeries at that point?
A. It might have been conversations with Heather and Dr. DeMars just trying to understand kind of what is all, what is all happening here. It might have been in the context of we were trying to understand which women are in the pipeline to have procedures done. I don't think Dr. Porter had anyone that she was actively taking care of that would require her, her involvement. Like, there were none of her patients in the pipeline. So in that discussion there was probably some discussion of, like, Okay, what is she doing? Does she have surgeries? What's planned? Kind of planning out

so that we don't leave people hanging.
Q. In this process in April of 2017, did you talk with any of the three physicians in REI, Dr. Seifer, Dr. Hsu, or Dr. Porter?
A. I did not.
Q. Why not?
A. Because the discussions around closure of the program were discussions that we were having at a, at a high level.
Q. Let's look at Exhibit 16 now.
A. Sure.
Q. Have you looked through it?
A. You just gave it to me, and you asked me questions.
ATTORNEY SCHROEDER: Take your time to review it.
BY ATTORNEY KRAMER:
Q. Take your time. Take your time to review it.
(Brief pause.)
A. Okay.
Q. I see you're not on this email chain, but did you, at any point, see the document that's attached to this?
A. I don't know if I did. First of all, the document attached to 9576 is the same one that was shown in Exhibit 15, I believe. Am I correct?

Q. Or at least the first, the first page.
A. The first page? Then there's a breakdown of proposed -- so then there's a, then there's kind of a checklist of proposed changes and steps that I actually described in a, in a previous question about the steps that we would go back and to do. Because we, we undertook -- and I'm referring to Page 4, I'm sorry, one, two, three, for, five, six, where we were beginning to look at the number of patients that would require scheduling and care beyond program closure.
Q. And is that the page that has the Number 150 on it?
A. Correct.
Q. I'd like to look at the page after that.
A. Okay.
Q. And I'm sorry. It doesn't have a number, but it says "Staffing Plan".
A. Correct.
Q. I'm looking at the middle column. It says "Future Staff with Complete REI Shutdown". There are three -- do you see that?
A. I do, yes, yes.
Q. Okay. There are two names that are listed here, Misty Blanchette Porter at 0.4 GYN US, meaning ultrasound, and Elizabeth Todd at a 1.0 GYN generalist.

Do you understand that the plan at this point on April 21st 2017 was to retain Dr. Porter and Ms. Todd as future staff with complete REI shutdown?
A. No.
Q. Why not?
A. I've never seen this document before.
Q. You weren't aware that that was the plan?
A. Well, I don't understand. This doesn't make sense to me. Future staff with complete REI shutdown means that we continue to do, we continue to do in vitro fertilization? We're shutting down REI and we do in vitro fertilization?
Q. The way I see this is that the plan was to redeploy Dr. Porter to be only GYN ultrasound and to redeploy Beth Todd to the generalist division, and this would not mean continuing IVF.
ATTORNEY SCHROEDER: Well, that's your interpretation, but you're asking him -- you're not actually even asking him a question. So, if you want to ask him a question, go right ahead, but he said he hasn't seen this before.
THE WITNESS: I've not seen this document, nor does the spreadsheet titled "IVF/REI Business Review" have the same terms that are reflected in the document that we're referring to under staffing plan.

So one says discontinue IVF program, REI program on hiatus. It doesn't talk about retaining anyone.
I've never seen the staffing plan document, and I don't understand what "Future Staff with Complete REI Shutdown" means, because it's not one of the categories reflected in proposed actions. So I don't know if this is a draft document. It was a document that, you know, Daniel, that they laid out some proposed things. I don't think this was a -- I don't know the provenance of this document.
BY ATTORNEY KRAMER:
Q. You never discussed the idea of a future staff that would include Dr. Porter and Ms. Todd?
A. No.
Q. Do you know if that possibility was discussed between Daniel, Leslie DeMars, and Heather Gunnell?
A. I don't know. I don't think so. We made a decision to close IVF and REI in total. That's what the communication was. That was what the plan going forward. So I, I don't understand. So I don't -- this might have been, Hey, we can do -- I don't know if this was Leslie's musings or kind of what, some other thoughts about what we can do. I just don't understand the, the title, because it would, if there's complete shutdown of REI, does that mean that in vitro

fertilization continues? I just haven't seen this document before. I don't know what to make of it. I don't know who authored it, and I don't know its intent.
Q. Is there something in that document that makes you think that IVF would continue?
A. Well, it, it just says "with complete REI shutdown". It doesn't say anything about -- that's why I'm saying, like, if I was in a meeting, I would ask for some more explanation about this, because I don't even know where this came from.
Q. Well, looking at Exhibit 16, this came from Heather Gunnell.
A. Okay. So she might have been, Heather, might have been, had her own way of thinking about restructuring things that never made it to a conversation with Heather, with, with Daniel or myself. It might have been thinking about -- I just don't know what the title means. You have to ask Heather.
Q. This email went from Heather to Daniel and Leslie DeMars with this attachment.
A. Okay. Let me just see. They added a couple things to the list. So what's, what I don't understand is that in the, in the timeline, so "Key Action Items" page, IVF program changes, you know, referral strategy

for IVF, referral strategy for REI. So this is the, the plan for closure of both programs. The, the three staffing plan models was never part of that. There's no other document that refers to future staff with complete REI shutdown in the documents that you've shared.
Q. And you're not aware of discussions about staffing plans with the shutdown?
A. No. We decided to close the program.
Q. Let's go through the timeline. I want to make sure that we're not missing any of the meetings that you had to discuss what to do with REI.
A. Okay.
Q. You made the decision. Do either of these documents clarify for you what the timeline was of when you started discussing --
A. Which documents are you referring?
Q. Exhibit 15 and 16, about when you started discussing with Daniel Herrick and Leslie DeMars.
A. I'm going to say we made a decision mid, mid to late April. I'd have to go back through my calendar to see the meetings. Clearly, Heather's document from 4/21, the decision has been made, and we've already started, as is reflected in the document, Exhibit 16, Page "IVF/REI Program Changes", we've begun to outline

the, the step-by-step process of how we would refer patients. That's why the, the subsequent page around staffing plan makes no sense. There was never a plan to complete REI shutdown, because it doesn't make sense. I don't -- I never saw this document.
Q. I thought this was a complete REI shutdown.
A. Yeah, I just, I don't know what -- so the document refers to both IVF and REI. So I don't know why, in Heather's document, she's just referring to complete REI shutdown.
Q. My understanding is that REI is the broader category and then IVF is one of the services that's provided by REI so that you could have, either you have a shutdown of IVF but you maintain everything else in REI, or, if you have a complete REI shutdown --
A. Yeah.
Q. -- that means no IVF and nothing else in REI.
A. Right. And yet they've referred to -- again, this is the reproductive, but it's discontinue IVF, REI program on hiatus. I'm just not -- there's a number of ways that they refer to it in the, in this document. I think our intent was to shut down the program. So, if this is reproductive endocrinology, we were going to shut down the whole program, including IVF. That was the intent, and that was the effect that we had.

I was not -- there was no plan specifically to shut down the program and retain Misty and Beth Todd to do something else, either, kind of -- and I don't know what future staff means. The plan was not, Hey, let's press the pause button and then come back to this in a couple of months and this is going to be the corporate -- we said we are going to shut this down, and then we'll think about the next steps.
Q. Meaning the plan that you settled on or one of the possibilities that you even discussed?
A. The plan that we settled on. We didn't discuss a, a plan where we had a complete shutdown of REI but continued on with Beth and Misty.
ATTORNEY KRAMER: Let's take a break for a second here.
(A recess was taken from 3:17 p.m. to 3:20 p.m.)
ATTORNEY KRAMER: Okay. So let's mark this as Exhibit 17.
(Deposition Exhibit 17 marked.)
ATTORNEY SCHROEDER: Can we do this with the actual document attached to it? Because he's not on it.
ATTORNEY VITT: No. Let me get the Herrick exhibits, because we went through this with him, and so, rather than trying to do it again --

ATTORNEY SCHROEDER: Then put it in? Yeah, that probably makes sense.
ATTORNEY KRAMER: Okay. We'll take a pause again.
(A recess was taken from 3:25 p.m. to 3:34 p.m.)
BY ATTORNEY KRAMER:
Q. Okay. So right now we have Merrens Exhibit 17, which, for now, is a one-page document, DH9582. We are obtaining the attachment to it the attachment that's referenced on this document that's an Excel spreadsheet. Once we have that, we'll supplement the record with the attachment. This is an email from Heather Gunnell to Daniel Herrick and Leslie DeMars from April 19th 2017. Dr. Merrens, have you seen this before?
A. I have not.
Q. I'd like -- to put this into sequence, we have Exhibit 15 from April 18th 2017 that says, "I think we're ready to share our plans with Ed and Maria", and then we have this one the next day, April 19th, and then we have Exhibit 16 on April 21st. That's the one that we've been talking about previously a few moments ago that includes the complete REI shutdown.
A. Right. The timeline, though, is that the timeline is the order of documents is 15, 17, 16, in terms of

the timeline.
Q. Yes.
A. So it's important to note that, between 17 and 16, the plan is not a complete shutdown and rebuild, but a decision has been made for a complete shutdown and the communication plan and everything is a complete shutdown. So just want to -- in the 2 days, the 48 hours, between the 19th and the 21st, a little bit longer, that was the final operating plan.
Q. That's, that's the key decision point --
A. Correct.
Q. -- was April 21st or thereabouts?
A. Yeah, or the 20th. I don't have the exact dates, but, but what we've looked at here is a couple different ways of modeling it of, you know, Do we put it on hiatus? Do we just do this? And, finally, I think the decision was we're just going to shut REI down. We're not going to continue some select services, and we're just going to shut this down and go from there.
Q. And what was the decision about staffing at that point?
A. In terms that we would shut down the program, end, end the providers, terminate the providers that were engaged in it, and there was very little other staffing

that was, that was involved in the program. Beth Todd was someone that could continue on working just in GYN. Nurses, for some reason, she'd worked in a different area.
Q. In this email, this Exhibit 17 from April 19th, Heather Gunnell says that, says, "My assumption is that MBP" -- that's Misty Blanchette Porter -- will be refocused to GYN U/S". Do you understand U/S to mean ultrasound?
A. Correct.
Q. Yes? Was this ever communicated to you that, as of April 19th, at the very least Heather Gunnell's assumption was that Dr. Porter would be retained as an employee of Dartmouth-Hitchcock and she would be refocused to GYN ultrasound?
A. No.
Q. That was never communicated?
A. I'm not aware of that being the plan. What I, what I am aware of the plan that we talked about in 16 is the plan to shut down the program and talk about terminating providers. There was one documentation on Exhibit 16, a communication to the REI team, May 1st, communicate with the patients, May 5th. That was the, that was it.
Q. Where --

A. I was not presented with a plan by Leslie, This is what we want to do. We want Misty to continue with ultrasound and just, just do that. That was not part of the plan.
Q. Where does it say in Exhibit 16 that the plan was to terminate the three physicians?
A. Um, communications to the REI team, that was in -- I'm, just my inference is that we met with the REI team to communicate the plan going forward.
Q. I thought you said a moment ago that in this Exhibit 16 there was a statement that the plan was to terminate the three physicians.
A. No. I, what I'm trying to -- communication to the REI team. I assumed -- I'm just commenting. Here's what we discussed, communication to the REI team. We set up a timeline when we actually met with the REI team to say that we're ending the program and ending your employment. So that's what I inferred from this.
Q. That was the meeting on May 4th?
A. Possibly.
Q. When we get the exhibit that's an attachment to Merrens 17, we'll come back and just supplement the record on that, but I think, for now --
A. Okay.
Q. -- we'll put that to the side. At some point, did

you have a meeting with risk management to talk about the closure of REI?
A. They were engaged in all, in the discussions about, as were HR and a range of other areas.
Q. So let's talk about that. We've, we've talked about the period of time when you had meetings with a very small group --
A. Yeah.
Q. -- with Dr. DeMars, Daniel Herrick, Heather Gunnell. At some point, then you brought the decision to a larger group?
A. Correct.
Q. Tell me about that.
A. Well, as I said before, the goal was to make sure, if this was the right thing, right decision, what are the implications of this? Remember, too, that, before we ever had these discussions, this group decided not to, not to enter any, I think, decided at the end of March they weren't going to add any more patients into the REI program. This was already a program that had recognized that it had challenges and stopped recruiting new patients.
So, even before there was any discussion with me, decisions about closing the program, who does what, it had already said we're not going to add any more

patients to our rolls. When we had made the decision to end the program, we had to understand the implications for patients.
ATTORNEY SCHROEDER: You keep saying "we". Who is we?
THE WITNESS: Me. When I made the decision to close the program based on input from Daniel Herrick and Leslie, the next steps were discuss with other important stakeholders within the organization to make sure that we had the right process around things.
BY ATTORNEY KRAMER:
Q. And those stakeholders included HR?
A. Human resources and risk and legal and everyone else that, like, How do we do this? How do we develop a termination letter? How do we make contact with other -- how do we have alternative plans for oocyte transport? How do we make plans to continue to support our lab and make sure our lab stays open in perpetuity? How do we contact other people that can make plans for each one of these women that had a, that had plans in place? How do we -- so lots of plans about how we tailor it down to individual patients and other people that are involved in this program.
Q. In those conversations with the broader group, did anybody raise questions about whether closure was the

necessary step?
A. No.
Q. Did anybody raise questions about the rarity of a division being closed down?
A. No.
Q. Why did you involve risk management?
A. Because I involve risk management in a lot of work that we do. This is -- we wanted to make sure that we would have steps in place. This is a highly sensitive line of care. We would have couples, women, partners that, that had eggs frozen in our lab. We would be closing a program. We wanted to make sure that we had mitigated all risk around ensuring that their samples were stored safely, that we viewed it from every possible perspective, and I involve risk in all those discussions.
Q. What was the plan with the lab?
A. The lab would, would remain open and functional. We have a -- we had a partnership with UVM. We would have our embryologists. We would maintain the lab and its function in perpetuity, because we had samples there, and we wanted to make sure those samples were maintained in the highest fashion and that, and, as we went forward, we would have the mechanism to transport those samples to the site if people wanted to continue

their IVF plans.
Q. Isn't it expensive to maintain the lab without the revenue from IVF procedures to support it?
A. Yes.
Q. Do you know roughly what the annual carrying cost is for the lab?
A. No. Do you understand that that wasn't an issue?
Q. I do.
A. Yeah.
Q. Yeah. I'm still asking about it.
A. The issue was that this was a really important part of our plan going forward that, while we shut down the program, there were people that had legacy samples and were relying on the safety of that for their future family planning, and we were not willing to compromise that in any way, regardless of cost. I mean, it's open today.
Q. So May 4th 2017 was the day that the closure was announced to the members of the REI division?
A. Correct.
Q. Were you involved in the meeting with the providers when they came in and you told them what was happening?
A. Yes. We had individual meetings with each one of them.

Q. Did you have a group meeting first?
A. I can't remember. I know we had individual meetings with David, Albert, and Misty, with Leslie, myself. I think Steve Woods was present in that meeting as well, from HR, as well. We had individual meetings.
Q. What do you remember from that day aside from what you've just described?
A. That we described that we're closing the program, that we would provide -- for, for a number of reasons. That we would provide severance and we would provide some outplacement assistance and helping get, garner a new position and would be working -- so it was part about, about the individual provider whose position was being terminated, but also plans apprising them on plans of taking care of their patients and ensuring there were plans for their patients going forward.
Q. Did you meet with Beth Todd before --
A. We did.
Q. -- you met --
ATTORNEY SCHROEDER: Let her finish the question.
THE WITNESS: I'm sorry.

BY ATTORNEY KRAMER:

Q. Did you meet with Beth Todd before you met with the larger group?
A. Yes, we met with Beth Todd.
Q. Why did you meet with Beth Todd first?
A. I can't answer why she was first. We wanted to meet with her and tell her that was the plan going forward. There was no -- I don't think there was a reason for the prioritization of her meeting. She had been someone that had been involved in all of them, and we decided to meet with her first.
Q. I thought that -- maybe I'm incorrect. I thought that there was a meeting with Beth Todd first and then there was a meeting with the other providers --
A. Correct.
Q. -- and then there was a meeting --
A. Individual.
Q. -- with the three individuals who were being terminated; is that the correct sequence?
A. That may be the correct sequence.
Q. Who spoke at the meeting with the providers who were being terminated?
A. Leslie.
Q. What was she like in that meeting? Was she -- did she seem uncomfortable? Did she seem comfortable? Do you recall?

A. I think she was direct. I think she explained. She had a -- she explained the situation and the decision to term, to close the program. I think it was a difficult decision. It was a difficult conversation to have, as you can imagine, but I think she was able to articulate it to each one of them and talk about what the steps going forward would be.
Q. Who met with the providers individually? Were you in those meetings?
A. Yes.
Q. Who else was in those meetings?
A. Leslie DeMars, and I think Steve Woods from human resources was there as well.
Q. Was Aimee Giglio there?
A. She was not.
Q. What was the reaction of Dr. Hsu to the, to your, to the meeting?
A. I, as I recall, Dr. Hsu was surprised and then, I think, worried about what his next steps would be and his career. I think all of them asked about their patients. What will happen with my patients, I think, was the primary concern even beyond kind of what was, what will happen with me. I think, What will happen with the program, my patients?
Remember, we had already stopped entering patients

into this program based on information and, and what had already happened. So I think there was some sense that there were already things evolving, but there were questions about, in terms of Albert, Dr. Hsu, questions about his patients and what the timeframe would be like and when will this happen, and it was, a lot of it was a lot of information all at once. So it was just to kind of say that there will be opportunity to have more discussions afterwards.
Q. About how many patients were there being treated by the REI division at this point?
A. I can't give you the exact number. When we got down to it, we had already identified those that were -- we had a cutoff point about those that were scheduled for procedures and how to deal with that. There were people that were actively being seen and plans for each one of them. So there was an individualized plan where every single one of those patients were contacted. They weren't sent letters. They might have been sent letters as well, but they were contacted about an individualized plan going forward.
ATTORNEY KRAMER: Do we have the attachment to 17?
ATTORNEY VITT: Here we go.

BY ATTORNEY KRAMER:
Q. Good. So let's replace 17 with this. This is the document that we had previously, the one pager. So let's just re-mark this.
(Exhibit 17 was remarked with attachments.)
A. Can you tell me the difference between Exhibit 17 and Exhibit 16?
Q. Well, in Exhibit 16 the cover email is dated April 21st 2017. In Exhibit 17 the cover email is dated April 19th. I don't know if there's any difference in the attachment.
Looking briefly at 17, the cover page of this document, the email says from Heather Gunnell, "My assumption is that MBP", Misty Blanchette Porter, "will be refocused to GYN ultrasound". If we look at the attachment, on Page 4 of the attachment where it says "Staffing Plan", again, it says "Future Staff with Complete REI Shutdown", listing both Misty Porter at .4 GYN ultrasound and Beth Todd as 1.0 GYN generalist.
Seeing this, does this change your understanding at all about whether there was ever an intention to redeploy Misty Porter as a GYN ultrasound specifically, even in light of the closure of REI?
A. It looks like one of the potential plans for a shutdown included a, continuing Beth Todd, Beth Todd as

a generalist and Misty, but then there's a future staff where it's just Elizabeth Todd. So I don't know what model they're talking about. So future staff, when you go to, when you refer to the, the text of Exhibit 17, also included is an expense breakdown for the cost of keeping the lab open for a year.
I don't know what she's talking about. So that's lab, which is the last page. I won't -- my refocused to GYN ultrasound. I don't know what the third future staff rebuild model refers to, and it's not referenced in her email. So a future state is one where there's no Dr. Porter involved and there is just Elizabeth Todd. So these are playing out current scenarios, one scenario that she labeled shutdown and then a future scenario.
I believe the future scenario is the scenario that we accepted as the best plan, one in which we completely shut down REI, and I don't -- there's a variety of terms here like "rebuild", "restart", "hiatus". There's not a good term sheet of definitions. So I think the hard part is interpreting how spreadsheets are titled with words like "hiatus" and "discontinue".
What I see on the, on this three-phase staffing plan sheet is that a future state that just includes

Elizabeth Todd being a GYN and REI lists here. I don't see where things are in terms of Dr. Porter playing a role. I see the, the lab continuing, and this was the model that we ended up doing and talking about in early May, one in which we would continue the embryology staff, Elizabeth Todd would play some role going forward, but we would terminate the physicians as the program was closed.

(Deposition Exhibit 18 marked.)

Q. Have you seen this before?
A. I, I believe I have reviewed this.
Q. In what context?
A. Materials that I reviewed with, with Don.
Q. For the record, when I say "this", I'm referring to Exhibit 18, which is DH25744 --
A. Yeah.
Q. -- an email from Leslie DeMars to Daniel Herrick on April 25th 2017. Dr. Merrens, you're not copied on this.
A. No.
Q. And you never received a copy of this --
A. No.
Q. -- contemporaneously?
A. Correct.
Q. Did you have any knowledge that something like

this existed?
A. No.
Q. It's dense, so let's go through. We'll go through it, and, if you need a chance to read it again, we can take that time.
A. We can do this line by line.
Q. Starting with, starting with the first paragraph, Dr. DeMars says, "Daniel, you obviously have a good sense of Ed, and he is furious at me, but there are some issues that he has to understand in order to get to yes on hiring Dan Grow in some capacity ASAP". Who is Dan Grow?
A. So Leslie came to me in the midst of what we, what we've been talking about for the past five hours and, in the middle of this maelstrom, said, Well, we can get this guy here. He can come and do it. He can come. I'm like, You've got to be kidding. I don't even know this guy, but she's reaching out to --

ATTORNEY SCHROEDER: Again, identify who you're talking about.

THE WITNESS: Leslie.

ATTORNEY SCHROEDER: Yes.

THE WITNESS: Sorry. So Leslie reached out to me and scheduled a meeting and said, "I'd like to bring Dan Grow here", and I said, "I don't know even

know who you're talking about". So, in between the plans about how we don't have nursing support, this is beginning to fall apart, there's, she's talking about bringing someone in here mixed in with a whole range of other things around where market share might go, and I'm just saying this is not the time to, you know, so --

BY ATTORNEY KRAMER:

Q. Sorry. Where what might go?
A. Market share.
Q. Oh, okay.
A. So I didn't -- she had one meeting with me. She said we have the opportunity to hire this guy, and I need to know, and I'm like, "We're not making any decisions about someone new in this mix until we understand the full spectrum of what's going on".
Q. And that's why you were furious at her?
A. I don't know what she's talking about. I don't know in what context. I think I may have told her that I can't imagine hiring someone now that we've gone through all this work to understand that, at every level, there is dysfunction and we're not sure that we can safely provide care for women in an ongoing fashion.
Q. Did Dr. DeMars ever propose terminating

Dr. Seifer, terminating Dr. Hsu, and bringing in Dan Grow?
A. She did not.
Q. What did she -- so that I understand, what did she propose in terms of Dan Grow?
A. I have -- I actually don't know. It may have been in the context of we need more capacity. You know, it may have been -- I actually don't remember, but it may have been, you know, there, David can't provide the full spectrum. Misty is out on disability and can work a certain amount, but we need more capacity to be able to do it. It may have been in that context that she was, that Leslie was describing her interest in Dan Grow. I never met Dan Grow, and I literally had one meeting with Leslie where she described this opportunity completely out of the blue.
Q. If there was an opportunity to bring somebody in and solve some of those clinical staffing issues, wouldn't that be a viable solution to solve what had been identified as the fundamental problem in REI that necessitated closure?
A. I think this was a, a less-than-valiant effort way late in the process in which we had already discovered so much was going wrong, and the addition of another person to the mix, I didn't think, was going help

things.
Q. I thought this process had only truly started in late April.
A. Well, what we discovered was that, by March, end of March, they had stopped recruiting new patients. They'd gone through a whole process of understanding. We had already lost a nurse. So in late April, a week before we actually terminate the people and the program, she's coming to me asking about, Hey, can we hire someone else to bring in here to kind of like shore this up?
Q. It's only a few days after April 21st when you had, I think, identified that as the date when a decision was made, correct?
A. I'm not sure what your question is.
Q. The, you're describing this as late in the process, and the decision had been made and in place for some period of time, but it seems to me that this is only a few days later and that there maybe would have been room to reopen the discussion, but that's what I'm asking you. Was there, was there room to reopen any discussion?
A. Discussion about what?
Q. What to do with REI.
A. We had already determined that we had lost nursing

staffing, that we probably couldn't continue because we didn't have the adequate nursing staffing. We had had a fair amount of discovery about the dysfunction of the group. Misty, as a principal, was out on disability and was not fully participating in, in the full spectrum of reproductive endocrinology work.
And, in the setting of what I was becoming aware of was much more of a problem and had been much more of a problem for a long period of time, the architect of this dysfunctional program was now wanting to bring yet another person to me in the same context she brought David Seifer. I was, so I was saying, in the context of all this, I'm not sure this is the right time, and I'm not sure this is the right person.
Q. When you say "the architect of the dysfunctional program", you're referring to Leslie DeMars?
A. I am talking about Leslie DeMars. So, as we've, as I've learned in late April, there was a lot more going on in terms of Dr. Hsu's capabilities, the issues with David Seifer, issues with how the group all comported themselves, worked together, didn't work together. So to add another person to this seemed to add complexity where we didn't need it, and our goal was to try to simplify things down to, How do we take care of patients? If we've lost nurses and doctors

can't agree how to work together in their capabilities, this was not the right environment to bring yet another person into the mix.
Q. Why do you call Dr. DeMars the architect?
A. She's the department chair, and she's the one that has been managing the, each one of these principal people in her division. So she's been the person that recruited David Seifer here. She's been overseeing how this is structured, how it delivers care, and has been overseeing the, the capacity and capability assessment of each of the, each of the people involved in the program. So that would be my -- she's the person overseeing this. "Architect" may have not been the right term, but she is directly responsible for every aspect of this division.
Q. It was her recommendation to shut it down, right?
A. It was my recommendation based on information in a discussion with Leslie and Daniel to shut down the program.
Q. Did you view Albert Hsu as a problem since day one?
A. There was clearly -- I think that's a mischaracterization of, of, there's -- lumping Albert in. He's been a problem since day one. There were clearly challenges around Albert's capability that,

that she tried to mitigate, both with working with David and working with Misty. I don't think -- "He's been a problem since day one", was a direct quote. I don't think I conveyed that in writing or in person.
Q. And was that your view?
A. I think there were many, many problems in this division, and, by this time in late April, I was being, I was apprised of how significant those problems were.
Q. Dr. DeMars says here maybe three-quarters of the way down the page, "We have to be very careful about the conditions under which we can terminate our providers". Do you know what she's talking about?
A. I think she's talking about -- her concern is that David's wife is a doctor in the system, and her concern was about market share, that David could join, could stay -- his wife lives in Manchester. He could easily move to Manchester, join one of the competing companies. So the issue about terminate is not, not about the conditions that we terminate. She may be talking about some organizations have a noncompete clause, of which we do not have. So she's worried about market share and him going to work for another organization. That was not my concern.
Q. And here at the bottom Dr. DeMars raises the possibility of offering Dr. Porter an ultrasound-only

position. She says, "We could offer her an ultrasound-only position". You've said that you never heard that as a possibility, right?
A. I think she counters that, and, subsequently, even under my query at the program --
ATTORNEY SCHROEDER: Just answer the question. That was never a possibility that you were --
THE WITNESS: I, this was not -- I've said this before. That was not one of the options that was, that was offered.
BY ATTORNEY KRAMER:
Q. Okay, go ahead. What were you starting to say?
A. She counters it by saying, "We can offer an ultrasound position, but keeping her out of rebuilding plans will be impossible". So I think she's musing at things. This was never a proposal to me. There was never a proposal that we're going to end the program and Misty will continue on doing GYN ultrasound. What was conveyed to me was that Misty's role in GYN ultrasound was very much focused around REI.
Q. Looking at the second page, I don't know what paragraph it is. It's the paragraph that starts, "The messaging is very messy, and we have patients who are about to start meds". Did you know that there were

patients who were about to start meds?
A. We knew, so we knew that there were patients in various stages of the reproductive cycle, and part of it was understanding what we should do about patients starting meds and how to transition them to other programs. It was very messy. That was the whole intent of engaging and understanding the patient needs early on in this process.
The, the, you know, although this was disruptive, there was no harm incurred. We got everyone aligned with another IVF program and have continued to kind of manage reproductive needs. So, although it was messy and patients were involved in things who were upset about transitions, we did this safely, and that was the goal.
Q. Was anybody's cycle interrupted or delayed as a result of this closure?
A. I think there were likely some delays. I don't know the specifics, but --
Q. And then in the next paragraph there Dr. DeMars says, "My life" -- this is a quote: "My life and the messaging would be much easier if John Kacavas determines that all three providers are at fault in the medi diversion issue and are facing loss of license". Who is John Kacavas?

A. Chief Legal Officer for Dartmouth-Hitchcock Health.
Q. What is your response to this statement from Dr. DeMars?
A. She's musing on the fact that there had been concerns about their dispensing other people's medications for other people's cycles, and that had been under, under review and whether that might result in something that would supersede her decision making around ending the program.
Q. Do you know what John Kacavas determined about the --
A. I do not.
Q. -- medication diversion issue?
A. I'm sorry. I do not.
Q. Do you think that Dr. DeMars's life would be easier if these three physicians lost their licenses?
A. I can't comment on that.
Q. Would it make the messaging easier?
ATTORNEY SCHROEDER: Objection, calls for speculation.
THE WITNESS: I, as with my comment about her life and messaging, this is a hard -- certainly wouldn't -- this has nothing to do with my messaging. I'm happy to kind of do the messaging. I think this is

more reflective of her inner angst. I can't speculate on it.
BY ATTORNEY KRAMER:
Q. Do you think it's irresponsible of her to say something like this?
ATTORNEY SCHROEDER: Objection, calls for speculation, argumentative.
THE WITNESS: I don't know what to say.
BY ATTORNEY KRAMER:
Q. When did you begin to have concerns about Dr. DeMars's leadership of OB/GYN?
A. I think, during this process, I had, during this process of discovery and as more information was shared. I, I think, certainly in, in April there had been concerns, as I expressed early on, around some decision making, but, clearly, during this process.
Q. Was there anything about her leadership outside of REI that caused concerns for you?
A. Yes. Certainly, the, the, we talked about the recruitment of David Seifer. That was associated with that. She made a decision to transition our second year of our residency program to Nashua to Catholic Medical Center in Manchester, and the process of coordinating a GME program's transition was not well-done. It was not well-coordinated. It was a

process that she led and caught a number of people a little bit scrambling, and it was not well-coordinated with, with Catholic Medical Center and not done in a way that worked well for, well for us and caught -- it had sent us all -- there's a lot of work that has to go into it, and she kind of made a decision without telling anyone. She had kind of talked about it, but never -- she had mentioned, Hey, we're thinking about doing this, but then made the decision and caught everyone off guard, and I was sincerely taken aback by the lack of forethought in that.

Q. When was that?

A. We transitioned it, so it actually happened -- I think that was in the beginning of '17, that summer of '17 when the, when the new residents would start at Catholic Medical Center.

Q. That the decision was made to do that?

A. The decision was made before that, and, and I think that the residents, the shift in residency was going to happen in the fall of '17. But you asked if there were questions about her decision making that were separate from REI. That would be an example of a decision making and plan and process that I thought was less than ideal.

Q. Any other examples?

A. Some of the -- she had a leadership style that didn't involve meeting with people, and I was -- had held no kind of departmental meetings or meeting with her divisional leaders on a regular basis, and it became clear that her understanding of things was not disseminated or based on regular meetings with her people. I met with her more regularly than she met with her division heads, and I worried about that in terms of her ability to adequately engage and assess issues that were happening in the department.

Q. Do you think that contributed to the dysfunction of REI?

A. I think it was a contributing factor, to some degree.

Q. Did you have concerns about DeMars's leadership prior to this late April, early May 2017 period?

A. Well, I was very clear with her that I was not pleased with the process by which she had recruited David Seifer, and I told her that.

Q. Was that retroactive when it turned out to be kind of a problem with him, or that was at the time?

A. I told her at the time.

Q. Because of the red flags?

A. Yes.

Q. Why didn't you send that back for a standard

recruitment process?

A. We had an open position. She had already brought him here for an administrative role. He already moved here from Oregon to kind of lead and do the administrative role in this. It was a very unique and not, not the standard way that we do things. I was not the Chief Clinical Officer at the time of his recruitment. Over, I was not in a position overseeing the chairs. We had a different, different Chief Clinical Officer at the time who would have made, who might have made a, who might have made different decisions at the time.

Q. Who was the Chief Clinical Officer at the time?

A. John Birkmeyer. So yes.

Q. I want to make sure that I'm understanding the pieces of this. Are you saying that Leslie DeMars brought in David Seifer in some sort of administrative role, which was completely within her discretion to hire somebody, and then, once he was in the system, then she basically leveraged that to then push him in as division director?

A. Correct. She wanted to add a clinical role to the, to the administrative role that he held.

Q. When he came in for the administrative role, was there any vetting process outside of the department?

A. I don't know if there was a formal process.

Q. Nothing that you knew of?

A. Correct.

Q. Let's mark this as 19. Please take a look at this and let me know when you're ready. This is Exhibit 19, a document DH13068, and there is a, at the bottom of it is an email from you, Dr. Merrens, to -- well, it doesn't say, but I, my interpretation of this document is that the email on the bottom was sent to Duane Compton and Rich Rothstein. Is that correct?

(Deposition Exhibit 19 marked.)

A. That is correct.

Q. Did you end up having a meeting with Duane Compton and Rich Rothstein?

A. Yes.

Q. When was that meeting?

A. I'm, I can't say the exact date. It was probably within the few days following this.

Q. Do you know if it was before or after you had the meeting with the REI providers to tell them that they were terminated?

A. I can go back through my schedule and determine the exact date, but I can't, I can't recollect now.

Q. What happened in the meeting with Compton and Rothstein?

A. I elaborated my concerns that I've articulated at the, in the email part of Exhibit 19 and that I actually described previous to this. Um, I met with them because the chairs have a dual reporting relationship to the Chief Clinical Officer, my capacity, and to the Dean of the Geisel School of Medicine for their academic work. At the time, Dr. Rothstein was also the Chief Academic Officer. So, in evaluating a chair and my concerns, I wanted to make sure that I was also talking with other people that engage in that reporting relationship, and I wanted to express my sincere concerns about her ability to continue in this role.
Q. At this point in time, did you think that she should stop being chair?
A. Yes.
Q. Did Duane Compton and Rich Rothstein agree with you?
A. Yes.
Q. Do you know if they expressed any of that in writing?
A. I don't believe they did.
Q. In this document towards the bottom when you say, "Secondly, we are undergoing a programmatic change in one of her clinical areas in which her lack of

leadership and engagement has been troubling", is that a reference to REI?
A. Correct.
Q. Did you meet with Dr. Compton and Dr. Rothstein more than once about Dr. DeMars?
A. No. I also didn't need their approval to move ahead. This was purely based on -- I mean, she's my direct report. She's an employee of Dartmouth-Hitchcock. This was informed courtesy and to garner their perspective and support.
Q. Did either of them have observations about Dr. DeMars that they shared with you?
A. No, they had no insights into the, into the two situations I, the situations I described in Exhibit 19 but had no other further insights, and I just -- they wanted to be apprised of whatever the next steps would be.
Q. At what point did you take steps to have Leslie DeMars be removed as chair?
A. I met with her shortly after. I don't know the exact date, and I certainly can obtain that from my calendar. And we had a meeting, and I expressed my concerns around her leadership in a number of areas and didn't, told her that I didn't think she could continue on in, in this role and asked her to step down.

Q. And was her stepping down as chair related to her management of the REI division?
A. There were a whole range of things, I think, management of the physicians in REI and how they were managed, the fact that there was, there were complaints, there were problems. There were restructuring of oversight. There were issues around who was capable and how things would work. There were issues around the residency program. There were issues around lack of ability to recruit in other areas in the department where I didn't think she was effective, and I didn't think she could be effective in the role, and I thought that she had adequately demonstrated that deficit.
Q. Do you think that Dr. DeMars is an accurate reporter of information?
A. No.
Q. What's the basis for that assessment?
A. Well, a reporter takes information and either disseminates it appropriately, shares it with their senior leadership, and asks for input or advice. I think she has summarized information but not shared or reported it adequately.
Q. Are there specific times that come to mind other than things that we've talked about so far today when

Dr. DeMars reported something to you that was inaccurate?
A. I think there were times in which she couched behavior, capability, interactions in ways that or worked in vagaries that didn't allow the details and the severity to become apparent, and that became apparent.
Q. At any point, did you feel that you could rely on Dr. DeMars's judgment?
A. At any point?
Q. Well, thinking back to was there a point in time when you felt that you could rely on her judgment?
A. Maybe early on, but it became apparent that I, in retrospect, there were situations in which her judgment and her decisions were, incurred challenges and harm.
Q. Let's talk about the messaging around the closure of REI. It's been somewhat of a topic. How did you decide what the messaging would be about the closure?
A. We decided that we would be clear that we could no longer continue with the program as we intended. There were staffing challenges was really the crux of just the mechanics of keeping the program open, but there was a lot in the, in the background, and the messaging was that we did not feel like we could safely continue to staff the program and we would be stopping the

program and we would be taking care of the patients that were currently seeing people and making appropriate referrals and opportunities for ongoing care. That was the essence of the communication.
Q. Did you discuss with anybody different messaging options, different ways to explain the closure?
A. I think we discussed a number of things, but I wanted to be true to what the issues were at hand.
Q. Did you consider ascribing the closure to issues with recruiting new providers?
A. No. That wasn't one of the issues.
Q. Did you or anyone else who was involved in this process meet with patient relations? Were they included in the meetings about the closure?
A. We had, we did have -- I'm, I can't remember who was involved, but we had people involved in communications that tapped into patient relations about, What's the right way to go, to go about doing this? I can't tell you who was engaged. We had everyone involved, communications, patient relations, patient experience. We have an office of patient -- we had everyone involved so that we would try to do this in the best way possible.
Q. Dr. DeMars seemed to have thought that patient relations was not included in the messaging

discussions. Do you think that patient relations was included?
A. When you say "messaging discussions", are you talking about the, the statement we make to the media? I'm just trying to understand how, what messaging you're talking about. I'm talking about the broader message that came out in the "Valley News" and "Vermont Digger" and everything else.
Q. I mean the talking point of when somebody says to you, Why did REI close --
A. Right.
Q. -- what's the explanation? Obviously, situations are complex.
A. Correct.
Q. History is complex.
A. Yeah.
Q. All of that.
A. Patient relations was not involved in developing the message. Patient relations, I think, was involved in, like, making sure that we've got, that we've got everything taken care of and that care will not be disrupted or minimally disruptive down to the patient. The message was something that I developed with HR, risk, our marketing and our communications people around what would be the right way of, of announcing

this closure.
Q. Do you know if there were efforts made to recruit more nurses in the spring of 2017?
A. We've had -- I mean, we've tried desperately to recruit nurses, and it's an ongoing effort, not only in, in GYN but across the organization. We're at a huge deficit for nursing and recruitment.
Q. Was there a decision made at any point to stop recruiting nurses for REI? Obviously, as of when the decision was made to close, but prior to that?
A. I don't think so. I mean, we were at a point where we were, we had such rapid turnover that it was, at some point, it was -- we couldn't do it fast enough, and it was proving to be a bigger issue than we had realized. I'm not sure. There was clearly a time where we said we're going to close the program, so we're not recruiting anymore, but we were really struggling to recruit people to be able to do this.
Q. Do you know who Sharon Parent is?
A. I don't.
Q. Have you heard the name?
A. Um.
Q. There was a document --
A. There was, yes.
Q. -- from her.

A. I don't know her role.
Q. You didn't know anything about her?
A. No.
Q. Did you know -- she's a nurse, and did you know whether she was interested in continuing to work for Dartmouth-Hitchcock in the spring of 2017?
A. I didn't.
Q. Did Daniel Herrick or Leslie DeMars or Heather Gunnell tell you anything about Sharon Parent in your meetings when you were discussing REI?
A. I don't believe so.
Q. Do you know who Mary Martin is?
A. No.
Q. Okay. And Judy McBean, we talked about her before.
A. We did.
Q. Yes, she's the per diem physician from Brattleboro?
A. Yes.
Q. Yes. Were you aware of whether she was interested in increasing her clinical time at Dartmouth-Hitchcock around this period, April, May 2017?
A. I'm, I'm not sure. I think there were some discussions which would we rely on Judy if, if post-termination would there be some situations where

we would need her to kind of see patients as we developed some other plans and utilize her to be able to do that? But that's the most I can recollect from the discussions.
Q. I was thinking more as an option of increasing the clinical resources. Since one of the, the reasons for the closure was inability to maintain clinical resources, if you have somebody who is a clinical resource and is offering more time, that seems to me to, to go against that statement.
A. I think the issue of the clinical resources we were lacking were nurses and the, the staff to be able to kind of run the program. I think she was a well-thought-of provider who did some part-time but wasn't going to be the solution to, to the program going forward.
(Deposition Exhibit 20 marked.)
THE WITNESS: I've completed reading the document.
BY ATTORNEY KRAMER:
Q. Okay. This is an email chain from -- well, I guess the top two emails are from May 2nd, and then there's one on, there's a few on May 1st, including some that are redacted. Looking at the one from Aimee Giglio on May 1st at 10:05 p.m., Aimee Giglio says, "We

spent extensive time with her and Daniel this evening". Do you know who "her" is?
A. I'm, I suspect it's Dr. DeMars, but I'm not sure.
Q. So in this email you say, "While on the surface we're pinning the dissolution of our reproductive endocrinology program on our failure to maintain and recruit nurses for this work, it is ultimately the dysfunction of the physicians who worked in this area for years (as well as recent hires) and ultimately a failure of leadership, for which I hold Leslie fully accountable".
In explaining the closure, why didn't you simply explain the real reason instead of pinning it on something else?
A. I think the, what I've said, and I would say this exact statement today, is that the failure of nursing was the final straw that allowed a dysfunctional group not to continue to be able to provide care. So we're pinning it on the fact that I don't even have a nurse to check a patient into a room to be available for a harvest or a procedure on a weekend. So we ultimately were saying, like, We can't do this from a staffing standpoint, but underlying that is a complete dysfunction of the physician group, and this goes back many, many years as well.

We've had other areas within OB/GYN where, even before this, there have been people who won't talk to each other. I mean, there's years of history here, but, you know, ultimately, I said this is a failure of leadership. So I think our, the ultimate final thing was that we lost the nurses to be able to provide the care. So I'm pinning it on that, and I think that's, you know, I think that's the, that's the nature of which I've been, which I've said all along in this discussion.
Q. What do you mean by "on the surface"?
A. I think the most obvious reason for closing this program is that we just don't have nurses. So, on the surface, we don't have a nurse to check a patient in or do the procedures. So I think that was the, that that's the, the final straw. So I think that's one way of conveying that and one way that you can express that it's hard to express the multifactorial reasons for closing a program. It's easier to say that we don't have the staffing available to see the patients.
It's less easy to say this has been, now that I've learned more about this, this has been a very dysfunctional group with some challenges that I don't think were fully addressed by the chair or the people that are engaged in the, in the work amongst

themselves.
Q. When you say "less easy", less easy for whom?
A. For a public message, for our own internal message and how to explain this.
Q. Were you worried about the response if you explained the dysfunction and the lack of leadership?
A. I think the lack of leadership was over a broad area of things and was really the reason that I asked Leslie to step down from this role. The fundamental reason we had to close the program was the lack of nursing. So it's, this is not blaming nursing. It's just saying I can't do any more if I don't have nurses. The final nurse from Manchester retired, and this thing fell apart, but it fell apart for a reason that was due to a lot of dysfunction at the physician level.
Q. How come UVM is able to recruit nurses and Dartmouth-Hitchcock can't?
ATTORNEY SCHROEDER: Objection, calls for speculation. You can answer.
THE WITNESS: I have no idea. I mean, there's a, there's a difference. So is this in general, or is this in terms -- I'm not sure what context you're asking about. We both struggle with recruiting for nurses in both organizations. I've met with Maine Med and UVM, and we've talked about similar

aspects.
I don't think they struggle in -- I don't think they struggle any differently than we do in terms of the major issues we face are, are human resources and nursing staffing. They're in a little bit better market in terms of Burlington is a more attractive environment, primarily for a younger female cohort of nursing staff than, than the Upper Valley. We've done a lot of work in this area. We've really struggled to hire nurses in this and in a whole bunch of other areas.
BY ATTORNEY KRAMER:
Q. I'm looking specifically at the, I guess, the last full paragraph of your email here where you say, "The fact that failures of such programs due to nursing shortages are not common and we'll be referring patients to a similar rural academic REI center in Burlington, Vermont will make our explanation to the public, patients, and the media, well, rather thin".
A. Yeah.
ATTORNEY SCHROEDER: What's the question?
BY ATTORNEY KRAMER:
Q. I'm getting there. Why did you say that it was rather thin?
A. Well, I'm just saying that we're struggling and

explaining to the public that, well, we're struggling, but we're going to send people up to Burlington, and it will be like, Don't they have the same problems? I'm not trying to just say this is a nursing issue. I'm saying it's, that was the final straw. The issue here is a lot of things weren't working well. It was the people involved, all three of the providers, and the fact that we couldn't get nurses to, to come and work with this group or to retain them.
So I think it's, you know, just blaming this on nursing is a little thin when we're similarly relying on UVM and other resources, actually relied on other resources other than UVM to provide these services. So this is just part of my thoughts that I expressed in email.
Q. Were you worried that people receiving the message that you put together wouldn't believe that it was the whole story?
A. I think that, that people would assume there's lots of things going on. There are people that were very dedicated to, to their clinician that was in the program. There are people that worry that they'll have to travel to do -- I met with numerous people personally that wrote me letters, and I met with every one of them to kind of talk about things. I met with

the media.
There's a lot of emotion around this, and I get that. This is a very emotional area. Infertility, having a baby, doing all these things is one of the most, most sensitive issues we face. So I was just being cautious about how we proceed and how we articulate this.
(Deposition Exhibit 21 marked.)
Am I missing something?
Q. In what way?
A. I, this looks very similar to another document that we've already discussed.
Q. It is very similar, and that's my question.
A. Isn't it --
ATTORNEY KRAMER: We received this document, 21, recently. Don, when did we get this one?
ATTORNEY SCHROEDER: I have no idea when you were given documents, this document.
ATTORNEY VITT: Within the past two to three days.
ATTORNEY SCHROEDER: I know it came from Jessica. So she's handling the document production in the case. I don't know when you got it. If you got it in the last few days, you got it in the last few days.
BY ATTORNEY KRAMER:

Q. So we got this one in the last few days.
A. But it's the same.
Q. It's not exactly the same.
A. Okay.
Q. So that's, that's the question. We had received what was in Exhibit 20 previously, and then a couple of days before your deposition we received additional, a couple of additional documents, including this one, Exhibit 20, and we noticed that the email that's at the top of Exhibit 20 is slightly different but very similar to the email that's in the middle of Exhibit 20.
So, if you look at the one that's in Exhibit 20, the time stamp is 8:20 a.m. If you look at the email in Exhibit 21, the email from you is 8:17 a.m. Do you know why there are two slightly different versions of this same document?
A. I don't have any, any explanation for that. I think they convey the same thing. There's different wording. They went to the same people and were sent within minutes of, of -- I don't have an explanation.
Q. Is there -- well, in Exhibit 21 it's signed, "Best, Ed", and it looks like handwriting, but I assume you have some electronic way of doing that. Your, the signature in number Exhibit 20 doesn't have that. Is

there some different functionality that you use to sign emails with this decorative "Ed" as opposed to not?
A. This is really a question?
Q. It is a question. I'm trying to understand why we have two different versions of --
A. Yeah.
Q. -- an extremely important document and why, after 21 months of this litigation, we're getting new documents that we haven't seen before.
ATTORNEY SCHROEDER: Hold on, hold on. You want to ask him questions, go right ahead, okay? You know exactly -- we explained to you that there are a number of documents that we produced to you last week that I think were inadvertently not produced, which we have produced to you now. Why there's a difference between these two documents has nothing to do with the merits of this case. However, we produced them, which is Document 26771 --
THE WITNESS: Let me --
ATTORNEY SCHROEDER: -- hold on -- 26772. Mr. Merrens has no idea about the document production that we've done in this case, but we've done it in good faith. We've produced them. We actually mentioned it during our court call with the judge the other day. So why we're retracing steps we've already gone over with

the court, I have no idea.
THE WITNESS: Can I try to explain a little bit here?
BY ATTORNEY KRAMER:
Q. That would be great.
A. Let me just try. There's an email from Aimee sent to me at 10:05 at the bottom here. What happened is there were two separate replies. One was on my computer that has an electronic signature and a, and a signature text. It has a small image of my signature, "Ed", that was done on my computer. I may have also, in the context of Aimee, Kim, John, to Aimee -- I may have also -- three minutes later, Aimee, Kim, John.
I, this may simply have been I might have left a meeting -- what you're seeing in the second thing is, when I compose emails on the same server on my iPad, I don't have the same photograph of my, and I don't have the same signature stamp. I might have just either -- I might have just responded to the same email a couple minutes later, not having remembered that I, that, or thinking that it didn't get sent.
Sometimes, things are in draft form. Like, when I, when I close out of one email, it saves it in draft form, and I might have sent it. I don't know. I don't have an explanation why there is a reply to Aimee and

Kim Troland and John Kacavas that essentially says very similar things. I don't have an explanation for that.
Q. And the email, when you say -- I think you said something about the second one in what you just said. You mean Exhibit 20, the one that's slightly later in time?
A. Correct. So Exhibit 21 was sent at 8:17:23, and Exhibit 20 was at 8:22:05. I don't have an explanation. I'm sorry. Was sent at 8:20. The reply was at. So I can't tell you why, 2 minutes and 37 seconds later, I sent another email essentially saying the same thing. It was probably some fluke of me going to my computer, then running to something else and coming back and doing that. I don't have an explanation. Same audience. I, I don't have much else to say about the content of the message.
Q. Okay. In Exhibit 20 Aimee Giglio says, "Happy to come in for a meeting. Let's discuss in the morning". Do you remember if you met with Aimee Giglio and anybody else on --
A. I did --
Q. -- that day?
A. I did meet with Aimee and chatted with her about the process of, of meeting with Leslie and talking about asking her to step down and kind of what

processes we would put in place and to think about kind of how we would do that from an HR standpoint.
Q. After the closure was announced on May 4th, was there confusion within OB/GYN about what was happening to REI?
A. I think there was a lot of concern. I think there is always the opportunity for rumor and other things happening. I think there was, I think there was, I think there was concern, and I think that there was an effort to mitigate that with meetings with the staff and to talk about next steps.
Q. Did you feel that there were any misconceptions about what was happening with REI?
ATTORNEY SCHROEDER: Objection, calls for speculation.
THE WITNESS: No.
ATTORNEY KRAMER: Is it okay if we take a quick break?
THE WITNESS: Sure.
(A recess was taken from 4:50 p.m. to 5:15 p.m.)
(Deposition Exhibit 22 marked.)
BY ATTORNEY KRAMER:
Q. Okay. We'll go back on the record. We're looking at Merrens Exhibit 22. This is DH18061 and 62. This is a, looks to be an email that came out from your

office on May 11th 2017 explaining clarifications about decision to close the REI program. Did you write this email, or did somebody else help you draft this?
A. I wrote it, and then I worked with our communications team to, to, and I vet it with the people that, that I, I want to make sure that I'm saying the right things.
Q. And do you remember who specifically you vetted this with?
A. You know, I probably worked with -- I don't remember. I mean, I've got a -- we've got a communications team. This comes from an account. This wasn't ghostwritten. I, I wrote a lot of this. I clarified with people around note, the dates of notifying patients and the process and, and had collected -- what had happened by this time, there had been a number of news reports, "Vermont Digger" that we had gotten, and a lot of communications were coming to me and certainly other, other people that I wanted to clarify certain tenets and points, and that was the, that was the, the reason I send this out.
Q. You say in the last paragraph the unsung hero in this whole situation is Heather Gunnell. Why do you describe her as being the unsung hero?
A. She did a lot, as the practice manager, holding

together the issues with providers, with nurses, with secretaries, with schedulers, just holding together all of that at a time where people perceived a lot was going on, and a lot fell to her to kind of manage all the people and the residents and, you know, she's the kind of mother hen of, of OB/GYN and had to make sure that everyone kind of understood and did that, and sometimes we don't acknowledge people who have done a lot of work to kind of maintain stability during a challenging time.
Q. How did you know that she was doing all of those things?
A. Because I had contact with Daniel and others around -- we had meetings, and she was in the background kind of helping to arrange the meetings with providers, getting it on their schedule, getting a room. I just knew what was going on.
Q. Did you hear this from the folks on the ground in OB/GYN, or was this information reported to you by Daniel and Heather?
A. That she was the unsung hero?
Q. No. The underlying, the underlying facts of what she was doing and the efforts and the coordination.
A. I can't remember. I like to acknowledge people's efforts during challenging times and how they did good

work and helped.
Q. You mentioned a moment ago that you received responses from patients and from others. How many -- I guess, looking at this time period between announcement of the closure and this May 11th 2017, how many patients did you hear from?
A. I heard from a mixture of patients, employees, and maybe I heard from a half a dozen patients and from some employees, and so it was a mixture.
Q. Generally, what was the, the tenor of what you were hearing?
A. The spectrum was disappointment, concern about the availability of services, concern about distance traveled for a service that requires a lot of follow-up tests, and so there was a broad spectrum. Some of it was, it was a range of things, and I replied to every single one of them and offered the opportunity to meet with them if they wanted. So it was a range of concerns. They were all amicable conversations, and it was hard.
Q. Did anybody reach out to say that they were supportive of the decision?
A. I don't believe any patients reached out and wrote supportive declarations around closing of the program, no.

Q. No. Well, providers, staff. You said that you received responses from patients, from providers, from staff.
A. Yeah.
Q. And you said there was a wide range of responses.
A. I meant a wide range of people that, that responded to me. So it might have been people that had worked in OB/GYN. It might have been someone who was a patient. It, so there was a -- there wasn't, it wasn't just all patients.
Q. Did anybody reach out and say, It's about time?
A. No.
Q. Were you surprised by the response that you got from patients?
A. No.
Q. Why not?
A. Any time there are things that change, people have perspectives on it, and I respect that.
Q. Were you surprised by the response that you got from other providers at Dartmouth-Hitchcock?
A. No.
Q. And why not?
A. People understood the issues, and, although there were concerns about how we might continue to provide certain services, how there would be coverage, how

their patients would be cared for, they understood that this was a decision that needed to be made, respected that, and agreed to move forward.
Q. Were you surprised by the response regarding the termination of Dr. Porter?
A. No.
Q. What did you expect the response to be?
A. I expected that there would be some people that were supportive and reflecting on all that she had done in her career and had been involved in this program for years. So I expected there would be people that would reach out, and there are a lot of decisions I make that people reach out and want to communicate with me their support, their displeasure, their perspective, and their ideas of how we might do it differently.
(Deposition Exhibit 23 marked.)
Q. Okay. So Exhibit 23 is DH6600 and 6601, a couple of emails back and forth between yourself and Vicki Maxfield. Do you know Vicki Maxfield?
A. I don't.
Q. Had you ever met her before you received this email?
A. No.
Q. Have you had further communications with her beyond this?

A. No.
Q. She, she writes that the, the department is short-staffed already. Were you aware that the department was short-staffed prior to the closure of REI?
A. Yes.
Q. And how did that factor into the decision to close REI?
A. She's talking about in general. We were, we were short maternal fetal docs. We actually had had some trouble recruiting physicians during Dr. DeMars's tenure in areas. So we were short in a number of areas in urogyn and had not been able to recruit physicians to a number of areas within OB/GYN.
Q. Did those issues with recruitment have anything to do with Dr. DeMars?
A. I don't know.
Q. How would the closure of REI impact the fact that it was already short-staffed? Wouldn't it make it more short-staffed?
A. Not in the, not in the areas of urogynecology and general, general. Yeah, I mean, it would mean that the physicians that were in REI were not covering those other areas, which we were, we were short on, already short. It would add to the overall number of people

that -- but this is closing an entire program. We were, we were recruiting in maternal fetal medicine, so general OB/GYN docs, and urogynecology and pelvic reconstruction. Those were two areas that we'd been recruiting for a while and didn't have, that were, we weren't able to bring people in.
Q. And Vicki Maxfield says "I do hope there is a way we could still keep Dr. Porter as a non-infertility REI specialist, GYN surgeon, and expert in gynecologic imaging". My understanding is that all of those practices could be maintained without an REI division.
ATTORNEY SCHROEDER: Objection.
BY ATTORNEY KRAMER:
Q. Am I incorrect?
ATTORNEY SCHROEDER: Objection, assumes facts not in evidence. You can answer.
THE WITNESS: So we would need to continue to provide -- at present, she wasn't providing gynecologic -- she wasn't performing gynecologic surgery at this point in, in her employment. She truly was an expert in gynecologic imaging -- there's no question -- and has, clearly has reproductive endocrinology interest. I think a lot of her interests in those areas were around REI, around infertility, reproductive endocrinology. Those are -- we were planning on ending

a lot of the areas that, really, she had sincere interest in and promulgating.
So it would be hard to figure out. I think it was just like with, we had the ability to do gynecologic imaging. We had the ability to do a number of these other things. I'm not sure how that would continue if we're going to shut down the program, and my understanding through Dr. DeMars was that her primary interest in those areas was through, was around REI and IVF.
BY ATTORNEY KRAMER:
Q. What is the basis for your understanding that, as of May 2017, Dr. Porter was not doing surgery?
A. I didn't think -- I think, at that time, I think that she was still on disability and was not actively doing the cases that, you know, myomectomies, hysteroscopy, and the surgical cases that Ms. Maxfield refers to.
Q. In your email back to Vicki Maxfield, you say, "Dr. Porter currently works at 20 percent of her time currently, and I'm not sure of her interest in staying on if the infertility part were to cease". You'd previously testified about the, your belief that Dr. Porter was working 20 percent of her time. Is that still your understanding, that it was, it was 20

percent and not 20 hours a week?
A. I think she was, I think she was -- 20 hours a week would be a lot of hours. I, I, I thought she was a .2 FTE was my understanding. We could figure out what that comes down to. That was my understanding. I don't think she was working 20 hours a week, but I could be wrong. My understanding she was working at a .2 FTE, which would be 20 percent effort.
Q. How did the fact that you thought she was working a .2 FTE factor into your assessment of whether there was a place for her at Dartmouth-Hitchcock going forward?
ATTORNEY SCHROEDER: Hold on. Objection. That's mischaracterizing his prior testimony, but you can answer.
THE WITNESS: So Ms. Maxfield is talking about a number of roles that she's worked with Dr. Porter in that she's highly valued and how she could, how she could continue that. All I'm saying is that she's currently only working a very small portion of what she had done previously, and I was, maybe it was supposition or whatever.
I'm not sure if we didn't, if we weren't doing in vitro fertilization and the other things that had been the mainstay of her career, whether that would be

interesting, interesting to her. It was a supposition. It was a reply to someone who actually knew her really well, and it was just communicated to her.
BY ATTORNEY KRAMER:
Q. In this you say, "I'm not sure of her interest in staying on if the infertility part were to cease ". At any point, did you talk to Dr. Porter about whether she did have an interest in staying on if the infertility part were to cease?
A. I did not.
Q. Did you ever receive communication from Dr. Porter expressing that she did, in fact, want to stay on, even if the infertility part were to cease?
A. Yes.
Q. Did that give you information about her interest?
A. She had sent a document. I'm not sure of the date. I reviewed it as part of the, of some of the information. She conveyed to us a document expressing her dismay at the closure of the program, her perspectives on her value, her years of service, and what she could bring to it. There was not a mention of other issues that were going on related to Dr. Hsu or Dr. Seifer, nor was there any mention of her disability. It was more around there are other things that I can, that, that I'm interested in. So she did,

she did indicate her dismay at the closure of the program. That's what I can remember from the communication.
Q. Did it cause you to reevaluate her termination when you found out that she did, in fact, have a very strong interest in remaining at Dartmouth-Hitchcock, even without the infertility piece?
A. I would say that I thought a lot about this and even reflected with Leslie, like, What are the opportunities, and how do we think about this? We came to the understanding -- I came to the understanding that, no matter what we did, no matter -- I'm not talking about FTE or whatever -- it would never be a fulsome role for her, because her, her role was we were closing this program, and this would only be a step towards, When can we reopen? When can we do this? How can we continue to do this? People would be -- we would still be kind of limping along with a talented physician but in a program that really needed complete closure until we figure out what are the plans going forward, and that was the ultimate decision.
Q. When did you have those conversations with Leslie about Dr. Porter?
A. I even reflected with her after I was getting a lot of these kind of communications from employees and

patients around, "I want to make sure that we've completely thought through a lot of this", and the discussion that I had with her was that there's a, there's a lot here, and I was convinced that a lot of what she was currently doing was, was really tied to REI and IVF. It wasn't just like, Well, I can go off and do something totally different. I'm not interested in pursuing that.
Q. Did you ever sit down with Dr. Porter and propose to her a very limited role and assess her interest?
A. No.
Q. Why not?
A. We had already made the decision to close the, close the program, and we thought that was the best thing as far as the program went, and perpetuating a role just, just based on her interest and need and desire wasn't going to get us to the place that we wanted.
Q. But there would have been work for her to do outside of the REI division, right?
A. Our understanding is that the work that she was interested in doing was mostly associated with reproductive endocrinology and infertility.
Q. Mostly, but not entirely?
A. I don't know. I'm telling you what I understood.

Q. Right. I know you said "mostly". So mostly, mostly implies not entirely.
A. That may be the case. There are, clearly, there were surgeries and other things that Misty has done in the past that are not directly tied to infertility, but the mainstay of her work and her career is around infertility and reproductive endocrinology. We had made the decision to close the program. It was not based on how little FTE or how great FTE she was. It was not based on that at all. It was based on we need to close the program and, and envision what it might, what it might be like in the future, but we need to close it now, because we don't have the capability of continuing it.
Q. When you talked to Dr. DeMars after the closure maybe around this time, middle of May 2017, what were your discussions about Dr. Porter?
A. I don't think I had specific conversations with Dr. DeMars about Dr. Porter.
Q. Did Dr. DeMars suggest finding a way to keep Dr. Porter at Dartmouth-Hitchcock?
A. She did not.
(Deposition Exhibit 24 marked.)
Q. And this is DH10582, Exhibit 24. It starts with an email from you on May 12th 2017, and then there's a

response from Daniel Herrick just to you. Your email below is addressed to Leslie, so and I think, based on other emails, that you had sent this email to Leslie DeMars and to Daniel Herrick.
A. I, I, it doesn't -- the, the way that Daniel has replied or at least how it's reproduced here doesn't include the whole email chain to, Leslie sent this to Daniel as well.
Q. And I think we'll see. We have another exhibit that includes --
A. Yeah. I never send things blind. I either copy, or it's either a copy or a to.
Q. You say here that you're getting inundated with heartfelt and long emails wondering why Misty can't stay on to do her ultrasound complex operative and teaching role, even if we end REI, and then you go on to say, "I suspect that you considered this in the evaluation of the program and your knowledge of Misty". Why did you say it like this?
A. I wanted to be sure around what I had heard from colleagues, her value to the organization, her own communication, and to be, to be sure in the decision. I wanted, I wanted to understand more fully why, why -- I think I understood, but I wanted to convey to her and to understand why the complete closure was the right

decision.
Q. Did you feel at this point on May 12th that you had not adequately discussed Dr. Porter and her various roles in the department?
A. No. I think that we, we had -- the hard part about this is that there was the Misty Porter who had worked and done all these roles, and then there was the Misty Porter that had been out on leave and then on disability, and there was this longing for the Misty Porter of old to do all these complex surgeries and to be the resource that people wanted to be able to do, and I heard a lot of that from people.
So this was a reflection back to, like, like, I know we've thought about this. I just want to make sure that this is the right decision, and what I garnered from her reply and from others is that, even in the context of doing limited work -- and I'm not sure what, what, you know, as Misty ramped up and was reengaging, what she was actually doing.
I was reassured, and you're going to show me in the next exhibit Leslie's response, which is what I understood from her and maybe conversations with others that a lot of the work that she wanted to continue to do would be in the context of restarting REI now that, and continuing to do this work, and we didn't feel like

that was going to be the right -- we felt like complete closure was going to be the right thing.
Q. And then a restart at some point, maybe?
A. So I've always envisioned that reproductive endocrinology and infertility is, needs to be part of the department of OB/GYN and part of the academic medical center. Clearly, it's going to be part of our future. The construct that we had when this was falling apart was not going to work. It would, it would become something else in the future with a new vision, with new leadership, with new care delivery models and a completely different structure, and I was willing to close the program in order to have a fresh start.
Q. Daniel Herrick responds to you and says, "Ed, I am not including Leslie in this response". Do you know why he didn't include Leslie in the response? What's your understanding of that?
A. I think he wanted to communicate this solely to me.
Q. And then he says, "Based on my observations and interactions, Misty has been the biggest driver to the dysfunction within REI". When you read his statement, "Based on my observations and interactions", what do you think he's referring to?

A. You're asking me to -- this is more of a supposition about, What is Daniel thinking about?
Q. Well, not what he's thinking about, but, when you read that, do you think that he has personal observations and interactions?
A. I think he does.
Q. Do you agree with his statements that Misty has been the biggest driver of the dysfunction within REI?
A. The dysfunction amongst those three physicians, each had a, each had a role in the dysfunction. She was not absolved of any of the responsibility. It was not just Dr. Hsu and Dr. Seifer. Misty played a role, whether she was present or whether she was on leave, in understanding, involving herself, and doing a whole range of things within, within the division. You can see it from her full evaluations at times when she wasn't present. I think there was a role both positive and sometimes negative that Misty played in this group. They were all responsible for the events that unfolded.
Q. Do you think that Daniel Herrick fully appreciated Dr. DeMars's role in the dysfunction of REI?
A. I think so.
Q. Did you have conversations with him about that?
A. He knew that I, that I was not pleased with her leadership, her management of the situation, the

management of the principal physicians, and the point that we had arrived at.

(Deposition Exhibit 25 marked.)

Q. As you predicted, this is Leslie's response.
A. Yeah.
Q. And this one is long, so take a minute to read it all over. Okay. So Merrens Exhibit 25, email exchange starting on DH10594, and it's three pages starting -- this email chain starts with the same email that we had been looking at in Exhibit 24, this, your email saying, "I'm getting inundated with heartfelt and long emails", and then it continues with a response from Dr. DeMars, a lengthy response, and then you respond a couple of days later saying, "I think it's a comprehensive, thoughtful, and appropriate insight". Do you stand by that assessment?
A. Yes.
Q. Do you agree with the statements that Leslie made in this email?
A. I don't agree with all the statements. I, she makes a number of statements, so it's hard for me to say I agree with the statements. She makes statements about the ultimate destination, about UVM, where she would land. I understand that what I understood from this is that most of her work here was focused on IVF

and reproductive endocrinology, her ultrasound work, and that wasn't going to be needed as we moved forward with the closure of the program.

I was okay with the issues here. I don't -- there are a lot of behavioral issues that I don't think were managed well by Leslie, and that includes Misty. I don't have -- I'm not bringing anything new to this discussion. But there were, there were challenges about how things were managed and, with her, and I, that's not part of this. I was convinced by her description that closing it entirely would be the best option.
Q. And you say here, "Ultimately, once the dust settles, will" -- I assume that means we'll, "we'll be in a better", something, "we will be a better position with all this including Misty". Can you explain for me a little bit more about your view that this was going to result in a better position for Dr. Porter?
A. Ultimately, I don't think closing the program, I mean, I would -- she needs to be in a place where she can be involved in a fully functioning reproductive endocrinology program, and that's not what we were going to have, and I would hope that, you know, in, in whatever transition we were going to do with the closure, that she would end up in a place where she

could be able to do that. We were not going to be able to do that with the structure that we had in place.
Q. In Dr. DeMars's email she expresses an interest in giving Misty, Dr. Porter, a chance to rest and recover and truly be on leave. Was that a factor for you as well?
A. Can you --
Q. I can show you. Do you want me to show you?
A. -- refer to the paragraph?
Q. It's in roughly the middle of the second page, the paragraph that starts with, "Misty's medical disability has been devastating", and then it's the last sentence of that.
A. Okay.
Q. Specifically, I think that -- this is from Leslie, Dr. DeMars -- "I think that the best outcome of this termination is the chance for Misty to actually be out on leave with no intervening responsibilities so that she can assess how much improvement she might gain".
A. Yeah, there was nothing about her disability that led to my decision about her termination, and I think Leslie's making an inference about what would be best for Misty. Leslie and Misty's relationship is complex. friends, coworkers, doctor-patient, they span every aspect of how people relate to each other. So I think

sometimes she mixes her aspirational views of what might be best for Misty.

I didn't reply to that, because nothing about what, nothing about her disability or her needing time off had any component to the decision that was made, and we were pretty clear about that. I, ultimately, I think I said, you know, my hope is that things are better for her, and that was my hope when I first met Misty to talk about the issue with Rich Reindollar. I had always hoped for -- I crafted emails for her telling her, Maybe you should take the job in Hawaii. Maybe that will be a better place, more funding, more money, more overview.

I've always wanted the best for her. So none of it was -- I wanted none of this to be confused with the situation around her disability, and, frankly, I didn't know anything about the nature of her disability, about rest, about things, and I never, none of my communications ever referenced that. I wanted the best for her, and that was genuine.

Q. In this email from Dr. DeMars, in the, the next paragraph, the one after the one we were just talking about, at the end of that paragraph, Dr. DeMars says that, if she had made a decision to try and keep Misty, that Heather, the nursing supervisor, and the admin

supervisor would quit. Did Dr. DeMars express that concern to you prior to May 4th 2017?

A. She did not.

Q. Do you have any basis to know whether this is an accurate statement or --

ATTORNEY SCHROEDER: May 4th or May 12th?

ATTORNEY KRAMER: May 4th, the day that the closure was announced.

THE WITNESS: I, I don't have enough information to be able to comment on Heather and the admin supervisor's sense that they were intimidated.

BY ATTORNEY KRAMER:

Q. Do you have any knowledge of whether they would have quit?

A. I don't know. I don't have that knowledge. I know there are people that feel that sometimes, when working with Dr. Porter, there was the sense of intimidation, and I can see that, people making decisions like that. I didn't pursue it further in this discourse.

Q. And then at the, at the end of Dr. DeMars's email, this is on the third page of the document, Dr. DeMars says, "In our communications planning, we missed patient relations. I think that they would have had a slightly different message to start with". Did you

have any follow-up conversations with Dr. DeMars about what she thought that slightly different message would have been?

A. I don't. I didn't have follow-up around that, and I, and I thought that we included patient relations in some of the bigger communications around the, what we were doing. I don't think it would have changed the messaging. I think we engaged -- one of the primary things we did was engage pretty fully with patients. So I don't know. I don't think I followed up with her around that specific concern.

Q. If you were saying that you engaged patient relations, do you know why Dr. DeMars is saying, "We missed patient relations"?

A. I don't know.

Q. Who is Barry Smith?

A. Barry Smith is a former chair of OB/GYN.

Q. And did he reach out regarding the REI division?

A. Yes.

Q. What do you recall of his messages?

A. Dr. Smith expressed his displeasure at the several aspects of the decision, the planning, Misty, Leslie, and a whole range of things. They're clearly outlined in Exhibits 26 and 27.

Q. Oh, are you -- that's a joke because we haven't

gotten there yet?

A. I'm allowed one joke after 5:00 o'clock.

Q. It's been a long day.

A. It's okay. I can go a lot longer.

Q. No. Yeah. We don't -- I wasn't planning to get into the details of those.

A. Okay.

Q. What was your overall response to those emails from Barry Smith?

A. I agreed to meet with him.

Q. When did you meet with him?

A. Following he, when he reached out to me. I said, "Why don't we come meet?" I met with him. I met with Paul Manganiello, who was one of the founders of the REI program. These are both people that the media reached out to and have been caring, articulate founders of this, and I reached, actually reached out to Paul and visited him at his home on the date that we ended the program just to inform him. He, I had no obligation to do so, but I reached out to him to inform him and talk about next steps.

Q. What was Paul Manganiello's response?

A. I think he was saddened about losing this capability that he developed his whole career around developing. He'd worked with Misty for years, and this

was his pride and something he had developed, and I convinced him. I was clear with him that I was committed to restarting this in the future and I would, I would do that. But I had very good discussions with --

Sometimes the exchanges that happen over email are, are interpretable in a lot of different ways. I was pretty clear with Barry that I didn't need his disapproval in the context of decisions I make and his role as an emeritus professor, but I'd be more than happy to meet with him and talk about the specifics that I was capable of talking about.

Q. Do you recall -- well, were you interviewed by Rebecca Sananes of VPR?

A. Yes.

Q. Were you interviewed by anybody else at VPR?

A. I think she was the only, only one.

Q. And, when you were interviewed by her, was it on the record or off the record or both?

A. I think it was on the record, which means everything I said, I was happy to -- I didn't redact any -- I didn't say any things off the record.

Q. There was -- so there was no off-the-record conversation with her?

A. No, no.

Q. Yeah. She had quoted you as saying that the REI closure was due to infighting between the providers. Do you remember that? And there was -- do you remember that?

A. I do, because I contacted her afterwards and told her I never said that, and, and the way it's posted on VPR now is they've redacted that line as not a part of the, my, my interview. I think it was conflated with the comments from another person that was interviewed in the context of that report. Sisyphus Bradford was a law student at Vermont Law School who was, and other people that I think they contacted, but, if you look at the online article, they've redacted that statement attributable to me.

(Deposition Exhibit 26 marked.)

Q. In this email, you're sending out an email responding to, well, addressing the article from Rebecca Sananes and VPR News. You say, "Regrettably, Vermont Public Radio published an article yesterday indicating that I made comments to the effect that the program was being ended due to interpersonal issues amongst the physicians. Nothing could be farther from the truth". Do you stand by that statement?

A. That I didn't mention it in my interview with the, with VPR? Yes.

Q. How about the, "Nothing could be further from the truth"?

A. I'm telling you I, I didn't make that comment to the reporter.

Q. Aside from that issue, whether or not you said it to the reporter, was REI closed due to -- we can phrase it different ways, but one way to phrase it is interpersonal issues amongst the physicians?

ATTORNEY SCHROEDER: Objection. I think he's answered that, like, 18 times. You can answer again.

THE WITNESS: I think it was multifactorial. I've used that term a number of times, that the lack of effective collaboration and coordination amongst these people led to, in part, due to the closure of the program.

BY ATTORNEY KRAMER:

Q. I'm looking back at Exhibit 20. This is your email from May 2nd 2017 in which you say it is ultimately the dysfunction of the physicians. Is there a difference between the dysfunction of the physicians and interpersonal issues amongst the physicians?

A. No. I think it's ultimately -- so I, I talk about nursing staffing. I think what I'm, what I'm trying to say here -- I clearly hold them accountable. In the court, in, in an interview I did not implicate them as

the reason this program fell apart. I talked about -- so I wanted them to know that that was not part of my written discourse with, with the reporter. That's all I was saying.

I think they're clearly aware, and I have, I had expressed to Leslie and to others that there was dysfunction in this group. So part of it was I was talking about how the, how the article was published and, and reported on air. I don't, I don't discount the fact that there was dysfunction in the group and that the, and that they were, they were responsible in part for the dissolution of the program.

Q. Were you trying to shield the three providers from the extent to which you and the, the group that reached this decision viewed it as dysfunction among them?

A. I didn't, I didn't want to get into a situation where the dysfunction was the -- I didn't -- there were a lot of reasons we closed the program. I was not saying that the primary reason was the dysfunction amongst the group. Could I have phrased it differently, "Nothing could be further from the truth"? Maybe. I was trying to tell them that this was reported in a way that could make everyone just feel bad about their doctor who they saw and who they coordinated with, and I don't -- I think that's

something I learned later in the course.
But I wasn't trying to shield them. I think these were people whose programs I closed and whose roles I terminated. I wanted to make sure that what I said to the press was, the press was accurately reflecting things that I made in the interview. That's what I was trying to correct.
Q. Looking at -- sorry. This is going to be something new.
A. This is not the most updated version. If you go to this online, you can find the most updated version of the article with the formal redaction, and I'm referring to Exhibit 26.
(Deposition Exhibit 27 marked.)
(A discussion was held off the record.)
BY ATTORNEY KRAMER:
Q. Have you seen this before?
A. I have not.
Q. So this is Exhibit 27, DH1554 and an attachment, 15545 and 15546. There's an email exchange between Heather Gunnell and Daniel Herrick. The top email is Heather responding to Daniel and attaching something called "REI Notes 07 June 17 - DPH". Dr. Merrens, you're not copied on this.
A. I've never seen this document.

Q. You've never seen this? Do you have any understanding of why this document was created?
A. No.
Q. Are you -- what's your response to seeing it today?
ATTORNEY SCHROEDER: Objection. You're asking him to speculate about a document he's never seen before.
ATTORNEY KRAMER: I'm asking about his reaction. He can tell me what his reaction is.
ATTORNEY SCHROEDER: That's not what we're here for.
ATTORNEY KRAMER: That's what I'm here for.
ATTORNEY SCHROEDER: Well --
BY ATTORNEY KRAMER:
Q. What's your reaction to seeing this today?
A. I don't -- it's a mixture of lists of people, and I'm actually not sure what it all refers to. I don't know if on 15546 this is an email from Daniel, or I don't, I don't know what, I don't know what this all means. So I don't know if this is Heather's way of categorizing people involved in a team.
ATTORNEY SCHROEDER: Don't speculate. Don't guess.
THE WITNESS: Sorry. I don't know what this

is.
ATTORNEY SCHROEDER: Don't speculate.
BY ATTORNEY KRAMER:
Q. Before you put it away, let's talk about it a little bit. What was happening in the department around the time that this was sent on June 7th 2017?
A. I don't know.
Q. Are you aware of a division director meeting that occurred on May 18th 2017?
A. No.
Q. Did you believe that Dartmouth-Hitchcock was, at that time, working on a way to keep Misty Blanchette Porter?
A. No.
Q. Is Dr. DeMars's attributed statement here at odds with your understanding of her position at that time?
ATTORNEY SCHROEDER: Objection.
THE WITNESS: I don't know which attributed statement you're referring to.
BY ATTORNEY KRAMER:
Q. The one where it's attributed to her, to Leslie DeMars, that she said, Working on a way to keep Misty Blanchette Porter.
A. And what is your question?
Q. Was this statement that's attributed to her here

in this document at odds with what you understood her position to be at that time?
A. You're asking me about a comment attributed to Leslie and whether it's at odds with my understanding of what Leslie really thought?
Q. No. What you understood her position to be, what she told you so in May 18th 2018, 2017.
A. I was under the -- I don't know what the attribution is or how this was quoted or the veracity of this. We were not working on a way to keep Misty Blanchette Porter employed.
Q. This document also says that multiple times in one-to-one meetings or with a couple of other people in the room, that Dr. DeMars stated that senior leadership does not support OB/GYN, slash, women's health, and, obviously, this is coming secondhand from this document prepared by either Daniel Herrick or Heather Gunnell. You're specifically identified as one of those people. Are you surprised to see this?
A. I'm sorry if that's her perspective on senior leadership's perspective.
Q. Did she ever express something like that to you?
A. No.
Q. Did you ever hear of her having expressed something like that?

A. I've heard people say that, that that is a perspective that people in OB/GYN have felt following the closure of the program. I've not heard it directly from Leslie. I've not had it in emails or letters that she sent me directly. So I don't know the provenance of these quotes.
Q. Can you tell me more about who you heard this from?
A. I think that some of the email communication from patients and employees were concerns about this is emblematic of not supporting women's health. I think there were inferences to that in some of the communications that I received.
Q. Lower down on this page -- so this is 15546 -- it says that "Tim", meaning Tim Fisher, "also confirmed that Leslie has been sending conflicting messages within OB/GYN, both regarding finding a way to keep Misty on the team as well as her belief that we will reinstate the REI program and indicating that she already has resumes of potential leaders on her desk". Were you aware of Leslie sending any of these messages?
A. I wasn't aware. I don't know. I don't know what this document refers to, to be honest. I don't know who wrote it. I don't know what day it was. Is it -- I don't know who's saying this. So you're asking me to

interpret a document that I don't know who wrote about a perspective on a chair, her perspective on the future of the program.
I have a hard time commenting on this. I wasn't aware that she had potential leaders' resumes or that she was reinstating the program. I wasn't aware. At this point in, or soon after, you know, I had already talked about her stepping down as the, the this day -- or I can't remember what the timeline -- stepping down as the leader. So I don't know what comments she made in that period of time after she decided to tender her resignation from the role.
Q. Tender her resignation from what role?
A. Chair.
Q. When did she tender her resignation?
A. I asked her to, I asked her to step down from, from that role.
Q. When?
A. Following the meeting I had with her.
Q. When specifically was that?
A. I'd have to go back and find the date that we met. It would be -- it had to have been sometime in, in May that I met with her. So, if these were discussions that are happening in June, she had already -- I think we had already discussed her stepping down from her

role. I don't have access to my calendar to know the exact date that I had the meeting.
Q. Do you think that stepping down as chair was a good thing for Leslie?
ATTORNEY SCHROEDER: Objection, calls for speculation. You can answer.
THE WITNESS: That's a complex question. In many ways, yes. She thanked me after we had the meeting, and we talked about the next steps. So, I think, yes.
BY ATTORNEY KRAMER:
Q. And Dr. DeMars is no longer at Dartmouth-Hitchcock --
A. Correct.
Q. -- right? When did she leave?
A. I don't know the date.
Q. Was it -- do you know the month?
A. No.
Q. Do you know the year?
A. I feel like this is a Mini-Mental Status Exam. I don't have the date when she decided to leave. It would happen sometime in 2018, I believe, but I don't have the date. I can, I could find it, but I lack that on the timeframe. In her transition I supported her to be able to do programs that she wanted to be able to

do. I offered her the ability to -- I supported her interests in neonatal addiction. I gave her protected time to do so.
I gave her a lot of support in what that transition would be. She did that for a period of time and then announced that she would be leaving the organization and leaving academic medicine. I don't have the date in which that happened. She, for a period of time, months, six months, eight months or longer, continued on in the department in her gynecologic oncology role, seeing patients, doing surgeries, and had dedicated protected time to do this, this work around neonatal addiction.
Q. Whose idea was it for her to focus on perinatal addiction?
A. It was hers.
Q. When she left Dartmouth-Hitchcock, was she fired?
A. No, she resigned.
Q. What was her explanation for why she resigned?
A. I believe she had an opportunity to work in industry and was looking forward to that opportunity as a change of career.
Q. Is she still local in the area?
A. I don't know.
Q. Are you in touch with her at all?

A. No. I think she does still live in Norwich, but I don't know.

(Deposition Exhibit 28 marked.)

Q. Okay. This is Merrens 28, DH9476, 77, and 78. It's an email from Dr. DeMars on June 13th 2017, and, again, it looks like she forwarded it perhaps to the same group of recipients the next day on June 14th. The subject line is, quote, "unanticipated", close quote, "downstream effects". You're not listed on here as a recipient of this email. Have you seen this document?

A. I have not.

Q. You haven't seen it before today?

A. No.

Q. What's your understanding of why Leslie sent this email?

ATTORNEY SCHROEDER: Objection. You're calling for him to speculate about a document he's never seen before. So how can he possibly understand why Leslie DeMars sent this?

THE WITNESS: I have no idea.

BY ATTORNEY KRAMER:

Q. She identifies several pages worth of what she considers to be harms, the result from closing REI. Do you think that she is correct in her assessment that

these are harms resulting from closing REI?

A. I think this is a list of some things that may be relevant and some things that may not be relevant or attributable or actual issues. It's a pretty broad-ranging list that includes, you know, mentored students to erosion of trust and communication. So I don't know. I don't know the purpose of this document, sharing it with her division leaders or what the intent is. Is it to curate a list of, of harms, or is this designed to kind of mitigate and plan for the future? I don't know. I've never seen the document before. It wasn't shared with me.

Q. Are you surprised that it wasn't shared with you?

A. No.

Q. In this email in the subject line, Dr. DeMars has the word "unanticipated" in quotes. Were these effects anticipated and considered in your assessment of the REI program?

A. So there were a broad range of areas that were considered, including financial, reputational, contact. Under all these categories there were areas that we explored and wanted to understand and wanted to mitigate any potential harms as part of the process. So we understood the financial situation. We understood that, that they would have less of a

contribution margin because less money would be coming in. We knew that would affect them.

We knew there were issues around trainees' access to expertise and that they would have to go out, out else, outside to gain insights and have experience around in vitro fertilization. We knew that we had -- you know, there were, you know -- I think she lists some things here that were embryonic in their development. Certainly, developing a research program on endometriosis by Dr. Hsu was something that was not a well-structured and established academic endeavor. So I think it is a laundry list of things that would require some interpretation as to intent and, I think, are vague at best.

Q. At this point in time, she was still chair of OB/GYN, right?

A. I, that may be the case. I'd have to figure out the date that she actually resigned. I'm sorry. I don't have that at my --

Q. I'll say to you it was June, it was on or around June 22nd 2017.

A. Okay. So it was close.

Q. So this is before. Is an email like this what you would expect from a chair?

ATTORNEY SCHROEDER: Objection, calls for

speculation.

ATTORNEY KRAMER: How is that speculation?

ATTORNEY SCHROEDER: What he would expect. He says he's never seen it so --

ATTORNEY KRAMER: I don't see how that's speculation.

ATTORNEY SCHROEDER: You're asking him to speculate.

THE WITNESS: I don't -- the document has -- I don't understand what the intent of the document is, other than to list a series of potential harms that range from the obscure to the, to the monetary, and it doesn't talk about we should understand these, we should figure out what we can mitigate, how we can talk about other resources, how we can do things. It is just, Send me your list of harms in different colors. This is not the communication of a well-thought-out plan that I expect from, from the people that I ask to lead our organization.

BY ATTORNEY KRAMER:

Q. Do you see this document as an effort by Dr. DeMars to distance herself from the decision to close REI?

A. I don't know.

ATTORNEY SCHROEDER: Objection, calls for

speculation.
BY ATTORNEY KRAMER:
Q. Do you have a thought, since you --
A. I said I don't know. I, I don't view this as her distancing herself. I view this as another example in which she's expressing some concerns without framework that do not enhance her leader's ability to have trust about what's going forward. It's a vague document at best.
Q. Before the closure of REI, what plans were put in place for residency training of OB/GYN residents?
A. You mean, before the closing, how did we think about giving them the exposure to that?
Q. Exactly. My understanding is that one of the rotations that OB/GYN residents need to do is in REI.
A. I think there's opportunities for them to get that experience outside of the organization, to work with Boston IVF and other in vitro fertilization centers where we send our patients. I think there was opportunities that the interim chair worked on in terms of getting them that kind of experience.
Q. Was there specific planning that took place for that issue prior to the closure, prior to June 4th?
A. I think we knew that that would be an important part of, clearly, part of what would need to happen for

the residency program. I'm not sure we had every part of it firmly established, but it was, it was clearly something that we knew needed to be addressed, and we had plans to do so. I'm not sure of the specifics of whether -- that was, that was the intent and that's what occurred.
Q. Was that something that you would have handled, or would you have delegated that to either DeMars or somebody else in the department?
A. The interim chair, yes.
Q. When did the interim chair come on board?
A. We had an, we had an interview process. We had -- I asked the division leaders to kind of take over and, and manage while we, while we were without after Leslie had stepped down. I had an open recruitment process, internal candidates in which candidates came forward. I had a search committee, and we decided on Liz Erekson as the interim chair.
Q. What conversations have you had with Dr. Joanne Conroy about the REI division?
A. Joanne had just arrived at Dartmouth-Hitchcock when this was occurring. I told her kind of where we were, what events had unfolded, that we had made the decision to close the program, terminate the providers, and had worked across the spectrum of areas of D-H to

make sure that we took care of patients.
Q. Did you talk to Dr. Conroy about the REI division or any of the providers in the division prior to her joining, which I believe was in August of 2017?
A. No.
Q. Do you know if anybody else discussed the REI division with her before she officially came on board?
A. I do not believe anyone discussed REI with her.
Q. In your conversations with her after she became CEO in August of 2017, was anybody else in those meetings when you discussed REI?
A. No. I think it was just Joanne and myself.
Q. What was her response to what you said?
A. I think she supported the decision that had been made and understood that we were clearly interested in, in getting to a point in the future where we had the full spectrum of REI capabilities at our center.
Q. Have you discussed this lawsuit with Dr. Conroy?
A. No.
ATTORNEY KRAMER: Let's take a break, and we'll see if we can wrap up.
(A recess was taken from 6:28 p.m. to 6:30 p.m.)
ATTORNEY KRAMER: Back on the record. But we are, we are done as far as I'm concerned. Don may have some --

ATTORNEY SCHROEDER: I don't have any questions.
ATTORNEY KRAMER: No questions? Okay. Then we're all set. Thank you so much for being here today.

(Whereupon at 6:30 p.m. the deposition was adjourned.)

* * * * *

I have carefully read the foregoing

transcript of my deposition given on Tuesday, July 30, 2019, and the answers made by me are true and correct.

EDWARD J. MERRENS, MD

STATE OF _____

_____ SS.

At _____, in said County, this _____ day of _____, 2019, personally appeared before me the above-named EDWARD J. MERRENS, MD and made oath that the foregoing answers subscribed by him are true.

Notary Public

My Commission expires:

C E R T I F I C A T E

I, Sunnie Donath, RPR, Notary Public, do hereby certify that the foregoing pages numbered 1 through 242, inclusive, are a true and accurate transcription of my stenographic notes of the sworn deposition of EDWARD J. MERRENS, MD, taken before me on Tuesday, July 30, 2019 for use in the matter of MISTY BLANCHETTE PORTER, MD -vs- DARTMOUTH-HITCHCOCK MEDICAL CENTER, DARTMOUTH-HITCHCOCK CLINIC, MARY HITCHCOCK MEMORIAL HOSPITAL, and DARTMOUTH-HITCHCOCK HEALTH, United States District Court, District of Vermont, Case No. 5:17-cv-194.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Sunnie Donath, RPR
Notary Public

My commission expires:
January 31, 2021